

# District of Columbia Code

1961 EDITION ☆ SUPPLEMENT I

1962



TITLES 1-49

—  
TABLES AND INDEX





OFFICE OF LAW REVISION COUNSEL





# DISTRICT OF COLUMBIA CODE

1961 EDITION

## SUPPLEMENT I

LAWS—January 3, 1961, to January 9, 1962

NOTES TO DECISIONS—January 1, 1961, to July 31, 1961

Prepared and Published Under Authority of Sections 202, 203 of Title 1, United States Code,  
by the Committee of the Judiciary of the House of Representatives



UNITED STATES  
GOVERNMENT PRINTING OFFICE  
WASHINGTON : 1962





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UNDER WHOSE DIRECTION THIS  
SUPPLEMENT HAS BEEN PREPARED

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# TITLES OF DISTRICT OF COLUMBIA CODE

## PART I—GOVERNMENT OF DISTRICT (JUDICIARY EXCEPTED)

### Title

1. Administration.
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## PREFACE

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This first supplement to the District of Columbia Code, containing the additions to and changes in the general and permanent laws relating to or in force in the District of Columbia (except such laws as are of application in the District of Columbia by reason of being general and permanent laws of the United States), enacted during the first session of the Eighty-seventh Congress, has been prepared and published by the Committee on the Judiciary of the House of Representatives under authority of Sections 202, 203 of Title 1, United States Code. This supplement, together with the 1961 edition, contains the laws of the District of Columbia in force on January 9, 1962.

The 1961 edition of the Code was completely annotated with notes to decisions of the courts affecting the respective sections of the Code. These notes have been brought up to July 31, 1961, in this supplement.

The Committee gratefully acknowledges the assistance of Dr. Charles J. Zinn, law revision counsel of the Committee, and his staff, and of all others who have helped in the preparation of this supplement.

The Committee again invites suggestions and criticisms by users of the Code.



*Chairman, Committee on the Judiciary*



*Chairman, Subcommittee No. 3  
Committee on the Judiciary*

WASHINGTON, D.C.  
January 9, 1962

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# CONSTITUTION OF THE UNITED STATES OF AMERICA

## ARTICLE [XXIII]

SECTION 1. The District constituting the seat of Government of the United States shall appoint in such manner as the Congress may direct:

A number of electors of President and Vice President equal to the whole number of Senators and Representatives in Congress to which the District would be entitled if it were a State, but in no event more than the least populous State; they shall be in addition to those appointed by the States, but they shall be considered, for the purposes of the election of President and Vice President, to be electors appointed by a State; and they shall meet in the District and perform such duties as provided by the twelfth article of amendment.

SEC. 2. The Congress shall have power to enforce this article by appropriate legislation.

### PROPOSAL AND RATIFICATION

This amendment was proposed by the Eighty-sixth Congress on June 16, 1960 and was declared by the Administrator of General Services on Apr. 3, 1961, to have been ratified.

The amendment was ratified by the following States: Hawaii, June 23, 1960; Massachusetts, Aug. 22, 1960; New Jersey, Dec. 19, 1960; New York, Jan. 17, 1961; California Jan. 19, 1961; Oregon, Jan. 27, 1961; Maryland, Jan. 30, 1961; Idaho, Jan. 31, 1961; Maine, Jan. 31, 1961; Minnesota, Jan. 31, 1961; New Mexico, Feb. 1, 1961; Nevada, Feb. 2, 1961; Montana, Feb. 6, 1961; Colorado, Feb. 8, 1961; Washington, Feb. 9, 1961; West Virginia, Feb. 9, 1961; Alaska, Feb. 10, 1961; Wyoming, Feb. 13, 1961; South

Dakota, Feb. 14, 1961; Delaware, Feb. 20, 1961; Utah, Feb. 21, 1961; Wisconsin, Feb. 21, 1961; Pennsylvania, Feb. 28, 1961; Indiana, Mar. 3, 1961; North Dakota, Mar. 3, 1961; Tennessee, Mar. 6, 1961; Michigan, Mar. 8, 1961; Connecticut, Mar. 9, 1961; Arizona, Mar. 10, 1961; Illinois, Mar. 14, 1961; Nebraska, Mar. 15, 1961; Vermont, Mar. 15, 1961; Iowa, Mar. 16, 1961; Missouri, Mar. 20, 1961; Oklahoma, Mar. 21, 1961; Rhode Island, Mar. 22, 1961; Kansas, Mar. 29, 1961; Ohio, Mar. 29, 1961, and New Hampshire, Mar. 30, 1961.

### CERTIFICATION OF VALIDITY

Publication of the certifying statement of the Administrator of General Services that the Amendment had become valid was made on Apr. 3, 1961, F.R. Doc. 61-3017, 26 F.R. 2868.





DISTRICT OF COLUMBIA CODE  
1961 Edition

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SUPPLEMENT I

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LAWS—January 3, 1961, to January 9, 1962  
NOTES TO DECISIONS—January 1, 1961, to  
July 31, 1961



# THE CODE OF THE DISTRICT OF COLUMBIA

## PART I

### GOVERNMENT OF DISTRICT [Judiciary Excepted]

#### TITLE 1.—ADMINISTRATION

##### Chapter 2.—COMMISSIONERS AND OTHER OFFICERS

Sec.

1-224b. Regulations for the keeping and running at large of dogs.

§ 1-224. Police regulations authorized in certain cases.

###### AMENDMENT

1961—Section 3 of act Sept. 13, 1961, amended paragraph "Seventh" of the section by striking out the words "and running at large", so that the paragraph now reads, "To regulate the keeping of dogs and fowls."

###### EFFECTIVE DATE OF 1961 AMENDMENT

Section 4 of act Sept. 13, 1961, makes this Amendment "effective thirty days after the date of its approval" [Sept. 13, 1961].

###### CROSS REFERENCE

For Commissioners' authority to make regulations regarding dogs, see section 1-224b in this supplement.

§ 1-224b. Regulations for the keeping and running at large of dogs.

The Commissioners of the District of Columbia are hereby authorized and empowered to make, modify, and enforce regulations in and for the District of Columbia to regulate the keeping and leashing of dogs and to regulate or prohibit the running at large of dogs, including penalties for violations of such regulations as provided in section 1-224a. (Sept. 13, 1961, 75 Stat. 498, Pub. L. 87-227, § 1.)

###### EFFECTIVE DATE

Section 4 of act Sept. 13, 1961, makes this section "effective thirty days after the date of its approval" [Sept. 13, 1961].

###### CROSS REFERENCES

For other provisions relating to keeping and handling of dogs, see sections 1-230, 22-1111, 47-2003, and 47-2004.

§ 1-263. Advancement of moneys by disbursing officer.

The disbursing officials designated by the Commissioners are authorized to advance to such officials as may be approved by the Commissioners such amounts and for such purposes as the Commissioners may determine. (Sept. 21, 1961, 75 Stat. 564, Pub. L. 87-265, § 7.)

###### SIMILAR PROVISIONS

Section was enacted as part of the District of Columbia Appropriation Act 1962, act Sept. 21, 1961. Similar provisions are contained in appropriation act Apr. 8, 1960, 74 Stat. 30, Pub. L. 86-412, § 7. For other similar provisions see main volume of the Code.

##### Chapter 3.—OFFICERS AND EMPLOYEES GENERALLY

§ 1-311. Compensation of injured employees.

###### CODIFICATION

Act Oct. 3, 1961, 75 Stat. 751, Pub. L. 87-339, amended section 104 of the Federal Employees Compensation Act

Amendments of 1960 [Act Sept. 13, 1960, 74 Stat. 906, Pub. L. 86-767] by inserting into the first proviso the following: "except that this section shall apply to employees of the government of the District of Columbia other than members of the police and fire departments who are pensioned or pensionable under the provisions of the Policemen and Firemen's Retirement and Disability Act." [ §§ 4-521 to 4-538 ].

Section 104 of the Federal Employees Compensation Act Amendments of 1960, is set out as a note to 5 U.S.C. 790.

##### Chapter 8.—CONTRACTS

§ 1-804. Bond of contractors, laborers, materialmen—Right to sue, intervene—Surety—Liability—Limitations—Notice.

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Liability under prime contractor's bond 6

###### 3. Construction

Statute regarding furnishing of contractor's payment bond for any public building is to be liberally construed in favor of those who contribute labor or materials for public works. *Humphreys & Harding, Inc. et ano. v. District of Columbia etc.* (1961, 293 F. 2d 150, 110 U.S. App. D.C. 311).

###### 6. Liability under prime contractor's bond

Under statute requiring contractor for public building to give a contractor's payment bond to pay all persons supplying labor or materials, contractor, which placed verbal order for pilings with lumber company, which had plaintiff creosote pilings as required by contract, was liable when lumber company failed to pay plaintiff fully for creosote work. *Humphreys & Harding, Inc. et ano. v. District of Columbia etc.* (1961, 293 F. 2d 150, 110 U.S. App. D.C. 311).

Under statute regarding the furnishing of a contractor's payment bond for construction of any public building, it is not necessary that a supplier of materials have any contractual relationship with the prime contractor. *Id.*

##### Chapter 9.—CLAIMS AGAINST DISTRICT

§ 1-922. Negligent operation of vehicles by employees—Defense of governmental immunity—Exception.

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###### 1. Constitutionality

District of Columbia Employee Non-Liability Act which was made effective in any action pending at effective date of act, unconstitutionality deprived motorist and his insurer of common-law right of action to recover against ambulance driver for District of Columbia, who was on an emergency run at time that he struck automobile before effective date of statute on proof of ordinary negligence and allowing recovery against the District of Columbia only on proof of gross negligence. *G. P. Barrick et ano. v. District of Columbia* (D.C. Mun. App. 1961, 173 A. 2d 372).



Claims of unconstitutionality of statute immunizing District of Columbia policemen from liability for acts performed within the scope of their employment and providing instead for an action against the District, were insubstantial, and did not require the convening of a three-judge court to dispose of them. *R. J. Rohrlack v. T. R. Goff, E. J. Taylor and District of Columbia* (1961, 197 F. Supp. 670).

## 2. Construction

Resolution of conflicting interests among District of Columbia employees, the District itself, and persons injured through negligence of District employees acting within scope of their employment, was a permissible legislative object, and District of Columbia Employee Non-Liability Act providing that in any pending action against an employee in which the District was not named as the defendant, the District should be joined as a defendant and the employee dismissed, was not unconstitutional in its prospective operation. *G. P. Barrick et ano. v. District of Columbia* (D.C. Mun. App. 1961, 173 A. 2d 372).

District of Columbia Employee Non-Liability Act, which was made effective in any civil action or proceeding pending in any court in the District of Columbia as of the effective date of the act was intended to apply retroactively as well as prospectively. *Id.*

## 3. Reasonableness of Legislation

Statute immunizing District of Columbia policemen from liability for acts performed within the scope of their employment and providing instead an action against the District, but limiting the liability of the District for acts committed in emergency vehicles during emergency runs to acts of gross negligence, constituted a reasonable exercise of police power. *R. J. Rohrlack v. T. R. Goff, E. J. Taylor and District of Columbia* (1961, 197 F. Supp. 670).

Due process prevents only such retroactive legislation as is unreasonable and fact that positions held before enactment of legislation are adversely affected by it does not render such legislation per se unreasonable. *Id.*

Retrospective application of statute immunizing District of Columbia policemen from liability for act performed within the scope of their employment resulting in dismissal of action against policeman who had been involved in automobile collision, was not unreasonable where there was no claim that plaintiff's conduct would have been different if immunity rule had been known or change foreseen at time of accident. *Id.*

## § 1-925. Action against District employees barred for negligent operation of vehicles—Exception.

### NOTES TO DECISIONS

Constitutionality 1  
Construction 2

## 1. Constitutionality

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## Chapter 11.—ELECTIONS

### Sec.

- 1-1101. Election of electors of President and Vice President, and officials of political parties.
- 1-1106. Board independent agency—District to furnish facilities to Board—Seal.
- 1-1108. Candidates for office—Form and date for filing petitions—Number of signatures required—Arrangement of ballot—Nominations for presidential electors—Names of candidates for President and Vice President to appear on ballot under party designation—Form of ballot—Nominations by nonqualifying political parties—Qualifications of electors.
- 1-1109. Method of voting—Place—Watchers—Challenging of votes—Appeal from challenged ballots—Handicapped and absent voters—Voting in party elections.
- 1-1110. Dates for holding elections—Voting hours—Method of deciding tie votes—Naming successor to official who dies, resigns, or is unable to serve—Votes cast for President and Vice President to be counted as votes for presidential electors.

## § 1-1101. Election of electors of President and Vice President, and officials of political parties.

In the District of Columbia electors of President and Vice President of the United States and the following officials of political parties in the District of Columbia shall be elected as provided in this chapter:

- (1) National committeemen and national committee women;
- (2) Delegates to conventions of political parties nominating candidates for the Presidency and Vice Presidency of the United States;
- (3) Alternates to the officials referred to in clauses (1) and (2) above, where permitted by political party rules; and
- (4) Such members and officials of local committees of political parties as may be designated by the duly authorized local committees of such parties for election at large in the District of Columbia. (Aug. 12, 1955, 69 Stat. 699, ch. 862, § 1; Oct. 4, 1961, 75 Stat. 817, Pub. L. 87-389, § 1(1).)

### AMENDMENTS

1961—Section 1(1), act Oct. 4, 1961, amended the section by inserting at the beginning thereof the words: "In the District of Columbia electors of President and Vice President of the United States and".

1961—Section 1(25), act Oct. 4, 1961, amended the title of the chapter to read as follows: "An Act to regulate the election in the District of Columbia of electors of President and Vice President of the United States and of delegates representing the District of Columbia to national political conventions, and for other purposes."

### APPLICABILITY OF FEDERAL VOTING ASSISTANCE ACT

Section 2(c), act Oct. 4, 1961, provided that: "For the purposes of the Federal Voting Assistance Act of 1955, the word 'State' shall be deemed to include the District of Columbia." This act is set out in 5 U.S.C. 2171 et seq.

### CROSS REFERENCES

For definition of "State" and executives of each State as including the District of Columbia and its Board of Commissioners, see 1 U.S.C. 21.

For provisions of constitutional amendment [Articles XXIII] granting the District of Columbia authority to appoint electors of President and Vice President see page xi in this supplement.



**§ 1-1102. Definitions.**

For the purposes of this chapter—

(1) The term "District" means the District of Columbia.

(2) The term "qualified elector" means a citizen of the United State (a) who does not claim voting residence or right to vote in any State or Territory; and who, for the purpose of voting in an election under this chapter, has resided in the District continuously since the beginning of the one-year period ending on the day of such election; (b) who is, or will be on the day of the next election, twenty-one year old; (c) who has never been convicted of a felony in the United States, or if he has been so convicted, has been pardoned; and (d) who is not mentally incompetent as adjudged by a court of competent jurisdiction.

(3) The term "Board" means the Board of Elections for the District of Columbia provided for by section 1-1103. (Aug. 12, 1955, 69 Stat. 699, ch. 862, § 2; Oct. 4, 1961, 75 Stat. 820, Pub. L. 87-389, § 1(26).)

**AMENDMENT**

1961—Section 1(26), act Oct. 4, 1961, amended clause (a) of par. (2) of the section to read as above set out. The wording of the clause before this amendment is set out in the main volume of the Code.

**§ 1-1103. Board of elections—Terms of office.****AMENDMENT**

1961—Section 1(2), act Oct. 4, 1961, Pub. L. 87-389, amended the section by inserting at the end thereof the following sentence: "The said Commissioners shall from time to time designate the Chairman of the Board."

**§ 1-1105. Functions and authority of Board.**

(a) The Board shall—

(1) maintain a registry, keeping it accurate and current;

(2) conduct registrations and elections;

(3) provide for recording and counting votes by means of ballots or machines or both and not less than five days before each election held pursuant to this chapter, publish in one or more newspapers of general circulation in the District a copy of the official ballot to be used in any such election;

(4) divide the District into appropriate voting precincts, each of which shall contain at least three hundred and fifty registered persons;

(5) operate polling places;

(6) develop and administer procedures for absentee registration for and voting in any election held under this chapter by any person included within the categories referred to in paragraphs (1), (2), (3), or (4) of section 101 of the Federal Voting Assistance Act of 1955 (69 Stat. 584) [5 U.S.C. 2171].

(7) certify nominees and the results of elections; and

(8) perform such other duties as are imposed upon it by this chapter.

(b) Each member of the Board and persons authorized by the Board may administer oaths to persons executing affidavits pursuant to sections 1-1107 and 1-1108. It may provide for the administering of such other oaths as it considers appropriate to require in the performance of its functions.

(c) The Board may prescribe such regulations as it considers necessary to carry out the purposes of this chapter, including, a regulation permitting persons not absent from the District but who are physically unable to appear personally at an official registration place, to register in the manner prescribed in such regulation for the purpose of voting in any election held pursuant to this chapter.

(d) The Board may employ necessary personnel, at such rates of compensation as may be fixed by the Commissioners of the District of Columbia, without reference to the provisions of the Classification Act of 1949, as amended. (Aug. 12, 1955, 69 Stat. 700, ch. 862, § 5; Oct. 4, 1961, 75 Stat. 817, Pub. L. 87-389, § 1 (3), (4), (5), (6).)

**REFERENCES IN TEXT**

The Classification Act of 1949, as amended, referred to in subsec. (d), is classified to U.S. Code, title 5, chapter 21.

**AMENDMENTS**

1961—Section 1(3), act Oct. 4, 1961, amended par (1) of subsection (a) by striking out, "permanent".

Section 1(4), of same act, amended par. (3) of subsection (a) to read as above set out. The original wording of par. (3) is set out in the main volume of the Code.

Section 1(5) of the same act, amended the first sentence of subsection (b) by striking the words: "the Board, and persons authorized by it" and inserting in lieu thereof the words: "Each member of the Board and persons authorized by the Board" and by striking the period at the end of subsection (c) and inserting the following: ", including, a regulation permitting persons not absent from the District but who are physically unable to appear personally at an official registration place, to register in the manner prescribed in such regulation for the purpose of voting in any election held pursuant to this chapter."

Section 1(6) of the same act renumbered pars. (6) and (7) of subsection (a) as pars. (7) and (8) and inserted a new par. (6) as above set out.

**§ 1-1106. Board independent agency—District to furnish facilities to Board—Seal.**

\* \* \* \* \*

(c) Subject to the approval of the Commissioners of the District of Columbia, the Board is authorized to adopt and use a seal. (Aug. 12, 1955, 69 Stat. 700, ch. 862, § 6; Oct. 4, 1961, 75 Stat. 817, Pub. L. 87-389, § 1(7).)

**AMENDMENT**

1961—Section 1(7), act Oct. 4, 1961, amended the section by adding subsection (c) thereto.

**§ 1-1107. Registration—Conditions for registration—Registration affidavit—Registration period—Appeal.**

(a) A person shall be entitled to vote in an election in the District of Columbia only if he is a qualified elector and, except as provided in subsection (e) of this section, he registers in the District during the year in which such election is to be held.

(b) No person shall be registered unless—

(1) he is a qualified elector;

(2) he executes a registration affidavit by signature or mark (unless prevented by physical disability) on the form prescribed by the Board pursuant to subsection (c) showing that he meets each of the requirements specified in section 1-1102(2) for a qualified elector or qualifies under procedures established by the Board under paragraph (6) of subsection (a) of section 1-1105,

and, if he desires to vote in a party election, such form shall show his political party affiliation.

(c) In administering the provisions of subsection (b) (2), the Board shall prepare and use a registration affidavit form in which each request for information is readily understandable and can be satisfied by a concise answer or mark. The Board may request additional information required to determine whether the registrant meets the requirements imposed by or referred to in subsection (b).

(d) The registry shall be open from January 1 until forty-five days before the first Tuesday following the first Monday in November during each presidential election year except the forty-five day period which ends on the first Tuesday in May, and except as provided by the Board in the case of a special election. The Board may close the registry on Saturdays, Sundays and holidays. While the registry is open, any person may apply for registration or change his registration.

(e) If a person is not permitted to register, such person, or any qualified candidate, may appeal to the Board, but not later than three days after the registry is closed for the next election. The Board shall decide within five days after the appeal is perfected whether the challenged elector is entitled to register. If the appeal is denied, the appellant may, within three days after such denial, appeal to the municipal court for the District of Columbia. The decision of such court shall be final and not appealable. If the appeal is upheld by either the Board or the court, the challenged elector shall be allowed to register immediately. If the appeal is pending on election day, the challenged elector may cast a ballot marked "challenged", as provided in section 1-1109 (d). (Aug. 12, 1955, 69 Stat. 700, ch. 862, § 7; Oct. 4, 1961, 75 Stat. 817, 818, Pub. L. 87-389, § 1 (8, 9, 10, 11).)

#### AMENDMENTS

1961—Section 1(8), act Oct. 4, 1961, amended subsection (a) to read as above set out. The original wording of subsection (a) is set out in the main volume of the Code.

Section 1(9) of the same act, amended pars. (2) and (3) of subsection (b) to read as above set out. The original wording of former pars. (2) and (3) are set out in the main volume of the Code.

Section 1(10) of the same act, amended subsection (c) by striking "(b) (3)" and inserting in lieu thereof "(b) (2)".

Section 1(11) of the same act amended the first sentence of subsection (d) to read as above set out. The wording of the sentence prior to amendment is set out in the original Code.

§ 1-1108. Candidates for office—Form and date for filing petitions—Number of signatures required—Arrangement of ballot—Nominations for presidential electors—Names of candidates for President and Vice President to appear on ballot under party designation—Form of ballot—Candidates for electors not to appear on ballot—Nominations by nonqualifying political parties—Qualifications of electors.

(a) Candidates for office participating in an election of the officials referred to in clauses (1), (2), and (3) of section 1-1101 and of officials designated pursuant to clause (4) of such section shall be the persons registered under section 1-1107 who have been nominated for such office by a petition—

(1) prepared and presented to the Board in accordance with rules prescribed by the Board, but not later than thirty days before the date of the election; and

(2) signed by not less than one hundred voters, registered under section 1-1107, and of the same political party as the nominee.

(b) No such person shall hold elected office pursuant to this chapter unless he has been a bona fide resident of the District of Columbia continuously since the beginning of the three-year period ending on the date of the next election, and is a qualified elector registered under section 1-1107.

(c) The Board shall arrange the ballot of each political party so as to enable the voters of such party—

(1) to vote for the candidates duly qualified and nominated for election by such party under this chapter; and

(2) to answer in the affirmative or negative such questions relating to the conduct of the affairs of such party as the duly authorized local committee of such party may file with the Board in writing: *Provided, however,* That the questions shall be so filed not later than thirty days before the date of the election.

(d) Each political party who has had its candidate elected as President of the United States after January 1, 1950, shall be entitled to nominate candidates for presidential electors. The executive committee of the organization recognized by the national committee of each such party as the official organization of that party in the District of Columbia shall nominate by appropriate means the presidential electors for that party. Nominations shall be made by message to the Board of Elections on or before September 1 next preceding a presidential election.

(e) The names of the candidates of each political party for President and Vice President shall be placed on the ballot under the title and device, if any, of that party as designated by the duly authorized committee of the organization recognized by the national committee of that party as the official organization of that party in the District. The form of the ballot shall be determined by that Board. The position on the ballot of names of candidates for President and Vice President shall be determined by lot. The names of persons nominated as candidates for electors of President and Vice President shall not appear on the ballot.

(f) A political party which does not qualify under subsection (d) of this section may have the names of its candidates for President and Vice President of the United States printed on the general election ballot provided a petition nominating the appropriate number of candidates for presidential electors signed by at least 5 per centum of registered qualified electors of the District of Columbia, as of July 1 of the year in which the election is to be held is presented to the Board on or before August 15 preceding the date of the presidential election.

(g) No person may be elected to the office of elector of President and Vice President pursuant to this chapter unless (1) he is a registered voter in the District and (2) he has been a bona fide resident



of the District for a period of three years immediately preceding the date of the presidential election. Each person elected as elector of President and Vice President shall, in the presence of the Board, take an oath or solemnly affirm that he will vote for the candidates of the party he has been nominated to represent, and it shall be his duty to vote in such manner in the electoral college. (Aug. 12, 1955, 69 Stat. 701, ch. 682, § 8; Oct. 4, 1961, 75 Stat. 818, 819, Pub. L. 87-389, § 1 (12, 13).)

#### AMENDMENT

1961—Section 1(12), act Oct. 4, 1961, amended the portion of subsection (a) which precedes par. (1) to read as above set out.

Section 1(13) of the same act, further amended the section by adding subsections (d), (e), (f) and (g) thereto.

#### § 1-1109. Method of voting—Place—Watchers—Challenging of votes—Appeal from challenged ballots—Handicapped and absent voters—Voting in party elections.

(a) Voting in all elections shall be secret.

(b) The vote of a person who is registered as a resident of the District shall be valid only if cast in the voting precinct where the residence shown on his registration is located. The Board shall by regulation permit voting for electors of President and Vice President by any registered elector who is absent from the District or who, because of his physical condition, is unable to vote in person at the polling place in his voting precinct on election day.

(c) \* \* \*

(d) \* \* \*

(e) If a person has been permitted to vote only by challenged ballot, such person, or any qualified candidate, may appeal to the Board within three days after election day. The Board shall decide within seven days after the appeal is perfected whether the voter was qualified to vote. If the appeal is denied, the appellant may within three days of such denial appeal to the municipal court for the District of Columbia. The decision of such court shall be final and not appealable. If the Board decides that the voter was qualified to vote, the word "challenged" shall be stricken from the voter's ballot and the ballot shall be treated as if it had not been challenged.

(f) \* \* \*

(g) No person shall vote more than once in any election, nor shall any person vote in an election held by a political party other than that of which he has declared himself a member.

(h) \* \* \*

(Aug. 12, 1955, 69 Stat. 702, ch. 862, § 9; Oct. 4, 1961, 75 Stat. 819, Pub. L. 87-389, § 1(14, 15, 16, 17).)

#### AMENDMENTS

1961—Section 1(14), act Oct. 4, 1961, struck out the second sentence in subsection (a). The struck sentence read as follows: "Voting may be by paper ballot or voting machine."

Section 1(15) of the same act, amended subsection (b) by striking the word "ballot" and inserting in lieu thereof the word "vote" in the first sentence and by inserting at the end thereof the new sentence as above set out.

Section 1(16) of the same act amended subsection (e) by changing "municipal court of the District" to read "municipal court for the District"

Section 1(17) of the same act, amended subsection (g) to read as above set out. The original wording of subsection (g) is set out in the main volume of the Code.

#### § 1-1110. Dates for holding elections—Voting Hours—Method of deciding tie votes—Naming successor to official who dies, resigns, or is unable to serve—Votes cast for President and Vice President to be counted as votes for presidential electors.

(a)(1) The elections of the officials referred to in clauses (1), (2), and (3) of section 1-1101 and of officials designated pursuant to clause (4) of such section shall be held on the first Tuesday in May of each presidential election year. Any such election shall be conducted by the Board in conformity with the provisions of this chapter. Polls shall be open from 8 o'clock antemeridian to 8 o'clock postmeridian on election days.

(2) The electors of President and Vice President of the United States shall be elected on the Tuesday next after the first Monday in November in every fourth year succeeding every election of a President and Vice President of the United States. Polls shall be open from 8 o'clock antemeridian to 8 o'clock postmeridian on election day. Each vote cast for a candidate for President or Vice President whose name appears on the general election ballot shall be counted as a vote cast for the candidates for presidential electors of the party supporting such presidential and vice presidential candidate. Candidates receiving the highest number of votes in such election shall be declared the winners, except that in the case of a tie it shall be resolved in the same manner as is provided in subsection (c) of this section.

(b) Candidates receiving the highest number of votes in such elections shall be declared the winners.

(c) In the case of a tie, the candidates receiving the tie vote shall cast lots before the Board, at 12 o'clock noon on a date to be set by the Board, but not sooner than ten days following the election, and the one to whom the lot shall fall shall be declared the winner. If any candidate or candidates, receiving a tie vote, fail to appear before 12 o'clock noon on said day, the Board shall cast lots for him or them. For the purpose of casting lots any candidate may appear in person, or by proxy appointed in writing.

(d) In the event that any official elected pursuant to this chapter dies, resigns, or becomes unable to serve during his or her term of office leaving no person elected pursuant to this chapter to serve the remainder of the unexpired term of office, the successor or successors to serve the remainder of such term shall be chosen pursuant to the rules of the duly authorized party committee: *Provided*, That such successor shall have the qualifications required by this Act for such office. (Aug. 12, 1955, 69 Stat. 702, ch. 862, § 10; Oct. 4, 1961, 75 Stat. 819, Pub. L. 87-389, § 1(18, 19, 20).)

#### AMENDMENTS

1961—Section 1(18), act Oct. 4, 1961, amended subsection (a) by inserting the number (1) immediately after (a) and by the matter set out as par. (2) in said subsection.

Section 1(19) of the same act amended subsection (b) by changing "said election" to read "such elections."

Section 1(20) of the same act amended subsection (d) by striking the word "dies" and inserting in lieu thereof

"dies, resigns, or becomes unable to serve" and by striking the words "local committee" at the end of the subsection and inserting in lieu thereof "party committee: *Provided*, That such successor shall have the qualifications required by this chapter for such office."

#### CROSS REFERENCE

Sale of alcoholic beverages on election days, see § 25-107.

#### § 1-1113. Appropriations—Maximum expenditures by candidate—Maximum contributions receivable by committee—Maximum contributions to campaign—Statement of election expenses.

(a) There are hereby authorized to be appropriated, out of any money in the Treasury to the credit of the District of Columbia not otherwise appropriated, such amounts as may be necessary to carry out the purposes of this chapter.

(b) Subject to the penalties provided in this chapter, a candidate for elector of President and Vice President, national committeeman, national committeewoman, delegate, or alternate, in his campaign for election, shall not make expenditures in excess of \$2,500.

(c) No independent committee or party committee shall receive contributions aggregating more than \$100,000, or make expenditures aggregating more than \$100,000 for any campaign covered by this chapter.

(d) No person shall, directly or indirectly, make contributions in an aggregate amount in excess of \$5,000 in connection with any campaign for election of any elector, national committeeman, national committeewoman, delegate, or alternate.

(e) Every candidate and independent committee or party committee shall, within ten days after an election, file with the Board of Elections an itemized statement, subscribed and sworn to by the candidate or committee treasurer, as the case may be, setting forth all moneys received and expended in connection with said election, the names of persons from whom received and to whom paid, and the purpose for which it was expended. Such statement shall set forth any unpaid debts and obligations incurred by the candidate or independent committee or party committee with regard to such election, and specify the balance, if any, of such election funds remaining in his or their hands. (Aug. 12, 1955, 69 Stat.

704, ch. 862, § 13; Oct. 14, 1961, 75 Stat. 819, Pub. L. 87-389, § 1(21, 22, 23).)

#### AMENDMENTS

1961—Section 1(21), act Oct. 4, 1961, amended subsection (b) by inserting after the words "a candidate for" the words, "elector of President and Vice President,".

Section 1(22) of the same act amended subsection (d) by striking "any national committeeman" and inserting in lieu thereof "any elector, national committeeman".

Section 1(23) of the same act, amended subsection (e) by striking from the first sentence the words "the election" and inserting in lieu thereof "an election".

#### § 1-1114. False registration, fraud, and other corrupt practices in elections—Penalties.

Any person who shall register, or attempt to register, under the provisions of this chapter and make any false representations as to his place of residence or his voting privilege in any other part of the United States, or be guilty of bribery or intimidation of any voter at the elections herein provided for, or, being registered, shall vote or attempt to vote more than once in any election so held, or shall purloin or secrete any of the votes cast in such elections, or attempt to vote in an election held by a political party other than that to which he has declared himself to be affiliated, or, if employed in the counting of votes in any election held pursuant to this chapter knowingly, make a false report in regard thereto, and every candidate, person, or official of any political committee who shall knowingly make any expenditure or contribution in violation of this chapter, shall upon conviction thereof be fined not more than \$500 or be imprisoned not more than ninety days, or both. The provisions of this section shall be supplemental to and not in derogation of any penalties under other laws of the District of Columbia. (Aug. 12, 1955, 69 Stat. 704, ch. 862, § 14; Oct. 4, 1961, 75 Stat. 820, Pub. L. 87-389, § 1(24).)

#### AMENDMENT

1961—Section 1(24), act Oct. 4, 1961, amended the section by striking from the first sentence "if employed in the counting of votes in such elections" and inserting in lieu thereof "if employed in the counting of votes in any election held pursuant to this chapter knowingly" and by inserting the word "knowingly" before the words "make any expenditure".



## TITLE 1.—ADMINISTRATION, APPENDIX

### REORGANIZATION ORDER NO. 8.—MANAGEMENT OFFICE

Reorg. Ord. No. 8, C.O. 302,970.a, Sept. 25, 1952, as amended Aug. 24, 1961, ordered that:

1. \* \* \*

(c) The Management Office is responsible for planning, developing, directing, and coordinating a program for the effective use of automatic data processing systems and equipment throughout the entire District of Columbia Government.

### REORGANIZATION ORDER NO. 28.—DEPARTMENT OF SANITARY ENGINEERING

Reorg. Ord. No. 28, C.O. 302,970.H, C.O. 302,853/14, Apr. 3, 1953, as amended Aug. 4, 1953, Jan. 31, 1956, Jan. 17, 1961, and Oct. 17, 1961, ordered that:

\* \* \* \* \*

#### PART II

*Purpose.*—\* \* \*

Operates and maintains special-use buildings and facilities under the exclusive jurisdiction of the Department, including the maintenance of adjacent grounds, and the providing of necessary protective, elevator, custodial, and other related services.

\* \* \* \* \*

### REORGANIZATION ORDER NO. 34.—DEPARTMENT OF CORRECTIONS

Reorg. Ord. No. 34, C.O. 302,089, C.O. 302,853/14, May 28, 1953, as amended Dec. 10, 1953, Aug. 12, 1954, May 17, 1956, July 14, 1960, and May 4, 1961, ordered that:

\* \* \* \* \*

#### PART IV

K. *Health Division.*—Provides for the operation of a public health program for the inmates confined in the institutions, including provision for their medical, dental, and nursing care. Insures that the medical, dental, and nursing programs of the Department of Corrections are in conformance with the overall public health programs of the Department of Public Health, as far as practicable in a prison system.

\* \* \* \* \*

### REORGANIZATION ORDER NO. 38.—FIRE DEPARTMENT

Reorg. Ord. No. 38, L. S. 3089-B, June 18, 1953, as amended Aug. 27, 1957 and Oct. 17, 1961, ordered that:

#### PART I

*Fire Department.*—A. \* \* \*

\* \* \* \* \*

4. Operation and maintenance of special-use buildings and facilities under the exclusive jurisdiction of the Department, including the maintenance of adjacent grounds, and the providing of necessary protective, elevator, custodial and other related services, except Fire Alarm Headquarters which is operated and maintained by the Department of Buildings and Grounds pursuant to Reorganization Order No. 42, as amended.

\* \* \* \* \*

### REORGANIZATION ORDER NO. 42.—DEPARTMENT OF BUILDINGS AND GROUNDS

Reorg. Ord. No. 42, L. S. 4159-B, June 23, 1953, as amended Aug. 11, 1954, Nov. 23, 1954, Jan. 31, 1956, Apr. 24, 1956, Feb. 7, 1961, and Oct. 17, 1961, ordered that:

\* \* \* \* \*

#### PART IV

\* \* \* \* \*

F. *Operation and Maintenance Division:*

1. Operates and maintains the following District Government buildings and facilities, including the maintenance of adjacent grounds under the jurisdiction of the District of Columbia Government, and the providing of necessary protective, elevator, custodial, and other related services:

Name of building	Multiple- use	Special- use
1. Barret School-----	-----	X
2. Comfort Station No. 2-----	-----	X
3. Comfort Station No. 3-----	-----	X
4. Corcoran School-----	-----	X
5. D.C. Morgue-----	-----	X
6. District Building-----	X	-----
7. East Administration Building-----	X	-----
8. Fire Alarm Headquarters---	-----	X
9. Force School Building-----	X	-----
10. Ford Building-----	X	-----
11. Juvenile Court-----	-----	X
12. May Building-----	X	-----
13. Municipal Court (Civil Division)-----	-----	X
14. Municipal Court (Criminal Div.)-----	-----	X
15. National Guard Armory <sup>1</sup> ---	X	-----
16. New Cent. Library (499 Pennsylvania Avenue)----	X	-----
17. Recorder of Deeds-----	-----	X
18. Southwest Health Center---	-----	X
19. Warehouse (22 Adams Place, NE.)-----	<sup>2</sup> X	-----
20. 450 Main Avenue, SW.-----	-----	X

<sup>1</sup> Limited to the performance of maintenance and repair activities pursuant to the provisions of the act approved June 4, 1948, 62 Stat. 339; section 2-1703, D.C. Code, 1951.

<sup>2</sup> Operates and maintains the Warehouse, Shops, and Records Center facilities at 22 Adams Place, NE., on a reimburseable basis for such part of said facilities for which funds are not allotted to the Department of Buildings and grounds.

\* \* \* \* \*

### REORGANIZATION ORDER NO. 46.—METROPOLITAN POLICE DEPARTMENT

Reorg. Ord. No. 46, L. S. 4236-B, June 26, 1953, as amended May 17, 1955, Oct. 20, 1955, and Oct. 17, 1961, Jan. 31, 1956, ordered that:

\* \* \* \* \*

#### PART IV

K. *Uniforms and Equipment Section:*

\* \* \* \* \*

2. Operates and maintains special-use buildings and facilities under the exclusive jurisdiction of the Department, including the maintenance of adjacent grounds, and the providing of necessary protective, elevator, custodial and other related services.

\* \* \* \* \*

### REORGANIZATION ORDER NO. 55.—DEPARTMENT OF LICENSES AND INSPECTIONS

Reorg. Ord. No. 55, L. S. 4263-B, June 30, 1953, as amended Aug. 13, 1953, Dec. 17, 1953, June 30, 1954, Oct. 26, 1954, Aug. 11, 1955, Jan. 31, 1956, July 10, 1956, Oct. 2, 1956, Oct. 16, 1956, June 13, 1957, Nov. 27, 1957,

July 22, 1958, June 1, 1960, Feb. 21, 1961, and Nov. 7, 1961, ordered that:

\* \* \* \* \*

PART III

\* \* \* \* \*

*D. Inspection Division.*

9. Conducts inspections necessary to provide adequate safeguards to the public safety and health; evaluates the effectiveness of the existing regulations pertaining to minimizing the contaminants polluting the air and proposes changes in regulations deemed necessary to achieve the overall air pollution control objectives.

\* \* \* \* \*

REORGANIZATION ORDER NO. 57.—DEPARTMENT OF  
PUBLIC HEALTH

Reorg. Ord. No. 57, L. S. 4262-B, June 30, 1953, as amended June 30, 1954, Nov. 30, 1954, Jan. 31, 1956, Aug. 23, 1956, Dec. 13, 1956, Nov. 12, 1957, Dec. 23, 1958, Nov. 10, 1960, Feb. 21, 1961, Nov. 2, 1961, and Nov. 7, 1961, ordered that:

\* \* \* \* \*

PART III

\* \* \* \* \*

*A. Office of the Director.—*

1. Develops and proposes major programs, policies, and regulations on health, sanitation, air pollution, disease control, hospital and clinic care, and vital statistics matters to the Board of Commissioners.

14. Collaborates with the U.S. Public Health Service, D.C. departments, and other agencies in the Washington metropolitan area in performing research and in surveying and monitoring the air with the objective of developing and coordinating a long-range program designed to prevent such contamination of the air as endangers the health of persons, animals and plants. Coordinates all phases of air pollution within D.C. and assists in performing a similar role for the entire area. Reviews and analyzes the effectiveness of air pollution inspections and controls on motor vehicles, buildings, and open fires administered by other departments and proposes actions consistent with the program objectives. Prepares periodic reports on the effectiveness of air pollution controls toward attaining the established objectives. Keeps public informed on air pollution control matters.

15. Plans, organizes and directs the following public health education activities:

(a) Analyzes public health education needs in relation to the problems and resources available in the community selecting the most useful activity in each field of activity within the Department.

(b) Determines the educational approaches and application to current community needs, utilizing all available visual and audio methods.

(c) Provides leadership in the community for the educational activities of various health agencies and facilities in the interest of public health to eliminate overlapping and duplication and to stimulate activity.

(d) Provides guidance for in-service training of professional health workers in educational techniques of community health education.

(e) Demonstrates health education programs through pilot projects on special problems.

(f) Collaborates with departments of the District Government in increasing health oriented programs available to the general public (public schools, public welfare, vocational rehabilitation and recreation).

(g) Operates film library for official and community groups. Circulates pamphlets and professional journals within the Department.

(h) Produces are displays, posters and other material for reproduction purposes.

*B. Office of Administration.—*

\* \* \* \* \*

*(c) Bio-Statistics Division.—*

1. Formulates, plans, and directs a centralized bio-statistics and vital statistics program.

2. Collects, correlates, and analyzes morbidity and vital statistical data; prepares reports, charts, graphs, and other visual methods for keeping the Board of Commissioners, the Director of Public Health, constituent bureaus, and the community informed on activities of the Department and its health programs.

3. Conducts statistical studies and assists in research projects of the Department.

4. Maintains records of births and deaths, and issues certified copies of such records.

5. Issues permits for the removal, burial, cremation, disinterment, or reinterment of the bodies of persons deceased in the District of Columbia, or of deceased persons brought into or transported out of the District of Columbia.

\* \* \* \* \*

*H. Bureau of Environmental Health.—*

1. Inspects licensed dairy farms and cattle thereon, milk plants, milk receiving stations and ice cream plants supplying milk and ice cream for human consumption in the District; examines slaughter houses and animals slaughtered for human consumption in the District; and collects samples of such items as are necessary for laboratory tests.

2. Inspects all types of food distribution establishments, food processing centers and food preparing or serving establishments, including the food proper, equipment and all items used in the distribution, processing, preparation or service of food, and the premises; collects samples and makes cultures for laboratory tests; examines animals for rabies and furnishes technical supervision over the program for the vaccination of dogs for the prevention of rabies.

3. Supervises ways and methods to assure adherence to proper standards of hygiene for occupations, work places, work material, work conditions, and related matters concerning city planning; heating, lighting, ventilation, aerial pollution, noise and public health nuisances related to vacant land, occupations and work places; and health hazards associated with work material and conditions.

4. Conducts sampling of gaseous contaminants in the air; notifies the public of impending or potential temperature inversion periods; coordinates the air pollution study of damage to plants and prepares for the Director periodic reports encompassing the air pollution activities of all D.C. departments and agencies involved in this program.

5. Enforces from the standpoint of public health responsibilities the hygienic measures to be taken in such areas as the water supply, sewage disposal, collection and disposal of municipal wastes; bathing places, recreational areas and places of public assemblage; interstate carrier sanitation; controls industrial waste pollution of surface waters and water pollution. In connection with cross connections and plumbing defects encountered, where an immediate danger to the public health exists, takes emergency action necessary to prevent further exposure to the public to the health menace and immediately informs Department of Licenses and Inspections of full circumstances in the situation in order that the latter may secure correction of the deficiencies in accordance with applicable laws, codes and regulations.

6. Exercises leadership in public health preventive programs and corrective measures to control disease transmitted by insects, pests, vermin, and rodents in respect to the elimination of breeding places, eradication of the vector, and fumigation of materials and property. Upon request by the Department of Licenses and Inspections, undertakes or supervises proper fumigation or extermination measures in habitable premises.

7. Passes upon construction plans and alterations and performs pre-licensing inspections as required by regulation, except insofar as housing of all types is concerned.

8. Conducts educational classes in the public health aspects of environment, personal hygiene and food handling problems for industrial, environmental, management, and employee groups of the community.

\* \* \* \* \*

REORGANIZATION ORDER NO. 59.—BOARDS, COMMISSIONS  
AND COMMITTEE

Reorg. Ord No. 59, L. S. 4266-B, June 30, 1953, as amended July 17, 1953, Sept. 15, 1953, Dec. 10, 1953,



June 17, 1954, June 27, 1957, June 24, 1958, July 29, 1958, Aug. 25, 1959, Jan. 26, 1960, Aug. 9, 1960, Mar. 21, 1961, May 25, 1961, and Sept. 12, 1961, ordered that:

\* \* \* \* \*

#### PART V

\* \* \* \* \*

C. Qualification requirements shall be determined and officers shall be chosen in accordance with the statutes and regulations applicable to the boards, commissions, and committee having the same or similar names prior to their abolition by the Board of Commissioners on June 30, 1953, except that any person shall be eligible for appointment upon the Board of Podiatry Examiners who is a citizen of the United States and who has been for five years next preceding his appointment, both a resident of the Washington Metropolitan Area, as defined in the National Capital Planning Act of 1952, as amended, and in the active and reputable practice of dentistry in the District of Columbia, and except that the Commissioners may, in their discretion, appoint the members to the Board of Barber Examiners as they determine is in the best interest of the District Government, either upon the recommendations of interested groups or individuals, or without such recommendations. The Steam and Other Operating Engineers' Board shall be composed of three members, two of whom are practical engineers, neither of whom shall be in the employ of the United States or the District of Columbia, and the Boiler Inspector for the District of Columbia; and three alternates, two of whom shall be practical engineers, neither of whom shall be in the employ of the United States or the District of Columbia, and the Assistant Chief, Smoke and Boiler Section, Department of Licenses and Inspections.

\* \* \* \* \*

#### PART XII

##### *Practical Nurses' Examining Board*

A. *Establishment.*—Pursuant to authority contained in Section 7 of Public Law 86-708, effective July 29, 1961, there is hereby established, within the Department of Occupations and Professions, a Practical Nurses' Examining Board.

B. *Delegation of functions.*—The Practical Nurses' Examining Board is hereby delegated the technical and professional functions vested in the Commissioners by sections 8, 9, 10, 11, 12, and 14 of Public Law 86-708, and the administrative functions authorized to be performed by such sections are hereby delegated to the Director: *Provided*, That the functions of adopting and prescribing rules and regulations pursuant to the authority contained in section 8 shall remain vested in the Commissioners.

C. *Composition and qualifications.*—The Practical Nurses' Examining Board shall be composed of seven members appointed by the Board of Commissioners. Four such members shall be graduate nurses duly registered in the District of Columbia under provisions of the Act of February 9, 1907, as amended (D.C. Code, 1951 edition, Sec. 2-401 through 2-411), and who shall have had, since graduation, at least five years of experience in the nursing service. Three such members shall be practical nurses. From and after October 26, 1961, all such practical nurse members shall be duly licensed under the provisions of Public Law 86-708. At least two practical nurse members of such Board shall be present at each meeting of the Board.

D. *Terms.*—The initial appointments to the Practical Nurses' Examining Board shall be for the following terms: one graduate nurse and one practical nurse member for one year; one graduate nurse member and one practical nurse member for two years; and two graduate nurse members and one practical nurse member for three years. Thereafter, except in those instances when appointment is made to fill an unexpired term, each member of the Practical Nurses' Examining Board shall be appointed for a term of three years or until her successor has been appointed and qualified. In the event that any vacancy should occur in the membership of the Practical Nurses' Examining Board in any manner other than by the expiration of time, the Board of Commissioners shall fill such vacancy in the usual manner, for the duration of the unexpired term.

E. *Applicability.*—Except where inconsistent with this Part, all other Parts of this Order shall apply to the Practical Nurses' Examining Board.

#### ORGANIZATION ORDER NO. 105.—DEPARTMENT OF MOTOR VEHICLES

Organization Ord. No. 105, 55-885, May 17, 1955, as amended June 10, 1958, Sept. 9, 1958, May 19, 1959, and Nov. 7, 1961, ordered that:

\* \* \* \* \*

#### PART IV

\* \* \* \* \*

##### *F. Vehicle Control Division:*

1. Plans, directs, coordinates, administers and evaluates comprehensive procedures, processes and requirements covering the titling and registration of, and issuance of owners' identification tags for motor vehicles and trailers, and, the inspection of such vehicles and trailers for mechanical safety and for the prevention of noise and air pollution.

\* \* \* \* \*

#### ORGANIZATION ORDER NO. 108.—CITIZENS' TRAFFIC BOARD

Organization Ord. No. 108, 55-888, May 17, 1955, as amended Feb. 18, 1959, and Sept. 12, 1961, ordered that:

\* \* \* \* \*

#### PART IV

\* \* \* \* \*

1. The Board of Commissioners shall designate the Chairman and two Vice Chairmen of the Board.

\* \* \* \* \*

#### ORGANIZATION ORDER NO. 110.—COMMISSIONERS' URBAN RENEWAL COUNCIL

Organization Ord. No. 110, 55-997, May 31, 1955, as amended Sept. 4, 1958; Mar. 22, 1960, July 14, 1960, July 6, 1961, and Aug. 31, 1961, ordered that:

\* \* \* \* \*

#### PART III

*Composition and membership.*—1. The Commissioners' Urban Renewal Council shall consist of seven members appointed by the Board of Commissioners. After July 14, 1960, every appointment of a member shall be for a term of three years, and every vacancy shall be filled only for the unexpired portion of the term, but after the expiration of his term each such member shall continue to serve until his successor is appointed and has qualified. Every person who, on July 14, 1960, is a member shall continue to serve for the balance of the term to which he has been appointed (any vacancy in said balance of said term to be filled by appointment for the unexpired portion thereof) and upon expiration of said term the three-year term herein provided shall immediately commence, but such member shall continue to serve until his successor is appointed and has qualified. No person who has served six years or more consecutively as a member shall be reappointed as such member until after the expiration of one year from the end of such service.

2. If, in the opinion of the Council, it is considered necessary or desirable to augment the effort of the Council in order to carry out its work, the Council may request the Commissioners to designate other citizens as affiliate members of the Council. Affiliate members may serve on committees and take part in such proceedings as determined by the Council but shall have no vote in Council deliberations. Terms of service for affiliate appointees shall be as in preceding paragraph 1, of Part III.

\* \* \* \* \*

#### ORGANIZATION ORDER NO. 112.—BOARD OF APPEALS AND REVIEW

Organization Ord. 112, 55-1500, dated Aug. 11, 1955, as amended July 12, 1960, Aug. 9, 1960, Dec. 15, 1960, and Apr. 25, 1961, ordered that:

#### PART I.—BOARD OF APPEALS AND REVIEW

A. *Establishment.*—The Board of Appeals and Review, established in Part VIII of Reorganization Order No. 55, as amended, is hereby reconstituted as described below.



*B. Purpose, composition, qualifications of members and terms of office:*

1. The Board of Appeals and Review is an administrative agency in the Government of the District of Columbia providing a final administrative remedy in those cases assigned to it.

2. The Board of Appeals and Review shall consist of twenty-two members. The Chairman and Vice Chairman of the Board shall be designated by the Commissioners, provided, however, that the Vice Chairman shall exercise the authorities of the Chairman only in the absence of said Chairman.

3. Of the twenty-two members of the Board,

(a) seven shall be full-time employees of the District of Columbia of grade GS-13 or higher, but no such member shall be an employee of the District of Columbia in either the Office of the Corporation Counsel or in the Department of Licenses and Inspections. These employees shall receive no additional compensation for work performed by virtue of their appointment or service as members of the Board.

(b) fourteen shall be intermittent employees of the District of Columbia, each of whom resides in said District or owns in his own name real property therein, seven of whom shall be members of the Bar of the District of Columbia who have had at least five years experience in the active practice of law in the District of Columbia, and eight of whom shall be persons who possess, to the extent that the Commissioners may deem it necessary or desirable, insight and perspectives in the fields of architecture, construction, finance, public health, and social service, and with respect to whom the Commissioners shall take into account their qualifications, experience and community interests. These employees shall receive compensation when actually performing service as members of the Board.

4. The term of office of each member of the Board shall be three years, except that commencing May 1, 1960, the terms of two full-time and four intermittent members shall be for one (1) year from May 1, 1960, the terms of two full-time and four intermittent members shall be for two (2) years from May 1, 1960, and the terms of three full-time and seven intermittent members shall be for three years from May 1, 1960. Every vacancy shall be filled only for the unexpired portion of the term. After the expiration of his term each member shall continue to serve until his successor has been appointed and qualified. Members shall be appointed, and may be removed, by the Commissioners of the District of Columbia. On April 30, 1960, the terms of office and continued service of all members theretofore appointed to the Board shall terminate. No person who has served continuously for six years or more as a member of the Board as heretofore constituted or as constituted by this order shall be re-appointed as a member until the expiration of one year from the end of such service.

**ORGANIZATION ORDER NO. 121.—FINANCE OFFICE**

Organization Ord. 121, 61-1468, Aug. 24, 1961, ordered: That paragraph 8 of subsection G, in Part IV be stricken.

**ORGANIZATION ORDER NO. 122.—DEPARTMENT OF HIGHWAYS AND TRAFFIC**

Organization Ord. No. 122, 59-33, Jan. 8, 1959, and amended Oct. 17, 1961, ordered:

That Reorganization Order No. 53, dated June 30, 1953, as amended, is hereby redesignated Organization Order No. 122, and amended to read as follows:

**PART IV**

*D. Bureau of Construction and Maintenance.*—Directs the construction, maintenance, repair, and inspection program for highway projects and municipal wharves; performs field survey work on highway projects; procures, maintains, repairs and houses departmental vehicles and equipment and such non-departmental vehicles and equipment as the Commissioners order from time to time; performs landscaping in street right-of-way and activities related to the maintenance and beautification

of such streets; operates draw spans; controls the transporting of over or undersize loads through the District; participates and furnishes equipment during emergency snow removal; furnishes expert testimony in legal cases; coordinates its activities with concerned Federal, District or private agencies; maintains grounds and public parking under the jurisdiction and control of the District of Columbia Government other than those specifically assigned to other District Government departments, agencies and institutions; and operates and maintains special-use buildings and facilities under the exclusive jurisdiction of the Department of Highways and Traffic, including the maintenance of adjacent grounds and the providing of necessary protective, elevator, custodial and other related services.

**ORGANIZATION ORDER NO. 125.—COMMISSIONERS' COUNCIL ON HUMAN RELATIONS**

Organization Ord. No. 125, 61-846, May 9, 1961, ordered that:

In accordance with the public policy of the United States that all citizens without regard to their race, religion, color, ancestry or national origin shall have equality of opportunity with respect to employment in the government and in the use of government facilities and services, the Board of Commissioners issued its policy orders prohibiting discrimination in the District of Columbia Government and in connection with work performed under District Government contracts ordered that:

Commissioners' Order No. 58-535, dated April 9, 1958, as amended, establishing a Commissioners' Council on Human Relations, is hereby redesignated Organization Order No. 125, and amended to read as follows:

That in keeping with these policy orders and with the public policy of the United States to encourage harmonious relations among the residents of every community and to encourage the granting of equality of opportunity by persons engaged in private business, the Board of Commissioners hereby creates the Commissioners' Council on Human Relations.

1. *Purpose.*—The purpose of the Council shall be to advise and assist the Commissioners to promote, foster, and encourage (a) the full and impartial application and observance of the Commissioners' policy on non-discrimination within the District Government as it relates to employment and use of District-owned facilities; (b) the full and impartial application and observance of fair employment practices by persons holding District Government contracts; (c) with the approval of persons or corporations concerned, the observance and practice of fair employment policies by persons or firms in the District of Columbia; and (d) the observance and practice of good human relations, mutual understanding and equality of opportunity among the various racial, religious and ethnic groups of the community.

2. *Functions.*—a. The Council shall study, and upon complaint inquire into, and advise and assist the Board of Commissioners in relation to the following:

(1) Commissioners' nondiscrimination policy order on employment in District Government and use of District-owned facilities.

(2) Procedures to promote, assure, and maintain equal access to and advancement in employment in the District Government.

(3) Procedures prescribed by the District Government to assure compliance with the nondiscrimination-in-employment clause inserted in District contracts, in accordance with the policies of the Commissioners mentioned herein.

(4) Complaints of discrimination in employment patterns and practices contrary to the Commissioners' policy relating to District Government contracts.

(5) Programs for assisting officials, supervisors and employees of the District of Columbia Government in improvement of human relations practices.

(6) Educational programs for employer, labor, civic, educational, religious, and other nongovernmental groups in order to eliminate or reduce the basic causes of discrimination on the ground of race, creed, color or national origin.

b. The Council shall receive and may investigate complaints of tension, conflict and practices of discrimination and of efforts or activities of individuals or groups to incite discord, tension, hate and suspicion which may lead to breaches of peace and public disorder.

c. The Council shall serve in an advisory and consultative capacity to all departments, advisory boards, regulatory agencies and for other organizations of District Government to assure the effective compliance with the Commissioners' nondiscrimination policies and orders.

d. The Council shall perform any other advisory duties as directed by the Commissioners for the promotion of better human relations and understanding among community groups.

3. *Composition and term of office.*—The Council shall consist of nine (9) members selected by the Board of Commissioners. Persons appointed to serve on the Council shall be outstanding persons residing or having their principal places of business in the District of Columbia and representing a cross section of the viewpoints of the community. Salaried District Government employees shall not be eligible to serve as members of the Council. Members shall hold office for terms of three (3) years. Should a vacancy occur through the death, incapacity or resignation of a member, a successor shall be appointed to complete the unexpired term and in the same manner as regular appointments. No person who has served six years or more consecutively as a member shall be reappointed as such member until after the expiration of one year from the end of such service.

4. *Oath of office.*—Members shall take an oath of office as follows:

"I, \_\_\_\_\_, having been duly appointed by the Board of Commissioners as a member of the Commissioners' Council on Human Relations, do solemnly swear that I will support and defend the Constitution of the United States; that I will perform such duties as may be assigned to me as a member of said Council to the best of my ability without fear or favor; that I will exercise my best judgment and will consider each matter before me from the viewpoint of the best interest of the District of Columbia as a whole; and that I will well and faithfully discharge said duties; so help me God."

5. *Compensation.*—Members shall serve without compensation.

6. *Organization.*—The Board of Commissioners shall designate an Executive Director to serve the Council and such additional staff as the Board may deem necessary. The Executive Director to the Council shall have no vote. At the initial meeting in each fiscal year, following the appointment of new members, the Council shall determine its own organization, name its own officers other than the Chairman, who shall be designated by the Board of Commissioners. It shall meet at the call of the Board of Commissioners, the presiding officer of the Council, or a majority of the Council membership.

7. *Administration.*—The Executive Director of the Council shall be responsible for the administration of the Council. Expenses incurred by the Council as a whole, or by individual members, or its staff, shall be met from funds provided for the administration of District affairs.

8. *Reports.*—The Council shall regularly report its activities to the Board of Commissioners.

#### ORGANIZATION ORDER NO. 126—COMMISSIONERS' ADVISORY COMMITTEE ON PRACTICAL NURSING

Organization Ord. No. 126, 61-1046, June 19, 1961, ordered that:

There is hereby created in the District of Columbia an Advisory Committee on Practical Nursing.

#### PART I

*Purpose.*—The purpose of the Committee shall be to advise the Commissioners in preparing for carrying out the provisions of Public Law 86-708 pertaining to the licensing of practical nurses in the District of Columbia which shall become effective July 29, 1961.

#### PART II

*Functions.*—A. The Committee shall consider the following matters and advise the Commissioners thereon:

(1) The promulgation of regulations designed to implement Public Law 86-708.

(2) The establishment of fees to be collected by the Department of Occupations and Professions for services rendered in connection with the licensing of practical nurses in the District of Columbia.

(3) The establishment of standards for the accreditation of schools of public nursing in the District of Columbia.

(4) The establishment of policies and procedures pertaining to the licensing of practical nurses in the District of Columbia.

(5) The issuance of bylaws pertaining to the functions and activities of the District of Columbia Practical Nursing Examining Board to be established pursuant to Public Law 86-708.

B. The Committee shall serve in an advisory capacity to the Director, Department of Occupations and Professions.

C. The Committee shall perform other advisory duties pertaining to Public Law 86-708 as directed or requested by the Commissioners.

#### PART III

*Composition.*—The Committee shall consist of seven members appointed by the Board of Commissioners on the basis of personal qualification. Persons appointed to membership on the Committee shall be of outstanding ability and shall be currently employed in the District of Columbia either as a practical nurse or as a graduate nurse duly registered under the Act of February 9, 1907, as amended, with at least five years of experience as a nurse since graduation. Three members of the Committee shall be practical nurses and four members shall be graduate nurses.

#### PART IV

*Term of office.*—All appointments of members to the Committee shall expire as of midnight July 28, 1961, at which time the Committee shall be abolished.

#### PART V

*Compensation.*—Members shall serve without compensation.

#### PART VI

*Oath of office.*—Members shall take an oath of office as follows:

"I, \_\_\_\_\_, having been duly appointed by the Board of Commissioners as a member of the Advisory Committee on Practical Nursing, do solemnly swear that I will support and defend the Constitution of the United States; that I will perform such duties as may be assigned to me as a member of said Committee to the best of my ability without fear or favor; that I will exercise my best judgment and will consider each matter before me from the viewpoint of the best interest of the District of Columbia as a whole; and that I will well and faithfully discharge said duties; so help me God."

#### PART VII

*Organization.*—Except for a Chairman who shall be designated by the Board of Commissioners, the Committee shall determine its own organization select its own officers and establish its own rules of procedure. The Committee shall meet upon the call of the Commissioners, the Chairman of the Committee, or a majority of the Committee membership.

#### ORGANIZATION ORDER NO. 127—COMMITTEE ON EMPLOYEE CONDUCT

Organization Ord. No. 127, 61-1430, Aug. 17, 1961, ordered that:

There is hereby designated a Committee on Employee Conduct composed of the three special assistants to the Commissioners. The Special Assistant to the President of the Board of Commissioners shall serve as permanent chairman. The Attorney-Editor, Office of the Secretary to the Board of Commissioners, shall serve as staff to the Committee.



The purpose of the Committee is to provide a point of contact, organizationally close to the Commissioners, for receiving and reviewing complaints, including anonymous calls, and for the handling of inquiries regarding matters that indicate possible misconduct by District Government officials and employees.

The Committee shall receive complaints, including anonymous calls and handle inquiries regarding matters that indicate possible misconduct on the part of District Government officials and employees; obtain and review all of the facts pertaining to such complaints; and advise the Commissioners in those instances where the

nature and seriousness of the complaint or inquiry warrants the attention of the Commissioners.

District Government departments and agencies will be expected to cooperate and assist the Committee in the performance of its functions.

Nothing in this Order shall supersede or modify the provisions of Reorganization Order No. 48, dated June 26, 1953, as amended, which established Police Trial and Review Boards; Reorganization Order No. 39, dated June 18, 1953, which established Fire Trial Boards; or Organization Order No. 125, dated May 9, 1961, as amended, which established the Commissioners' Council on Human Relations.

## TITLE 2.—DISTRICT BOARDS AND COMMISSIONS

### Chapter 1. HEALING ARTS PRACTICE

Sec.

2-103. Commission on licensure—Creation—Seal.

2-103a. Standards of education and training—Register of approved schools and hospitals—License on years of practice—Graduates of foreign medical schools.

2-141. Delegation of functions of "Commission"—Definition.

#### § 2-103. Commission on licensure—Creation—Seal.

##### CODIFICATION

The second paragraph of this section as set out in the main volume of this code is comprised of section 5 of the act of Feb. 27, 1929, 45 Stat. 1327, ch. 352. Section 1 of the act of Sept. 14, 1961, 75 Stat. 518, Pub. L. 87-248 [set out in section 2-103a] amends section 5 by inserting (a) immediately before the first word of the section and by adding a subsection (b) thereto. For the sake of clarity it is deemed advisable to separate section 5, as amended, from this section of the Code and transfer it to section 2-103a in this supplement.

#### § 2-103a. Standards of education and training—Register of approved schools and hospitals—License on years of practice—Graduates of foreign medical schools.

(a) The Commission shall establish minimum standards of preprofessional and professional education in the healing art and may establish minimum standards for hospitals for interne training. It may determine whether preprofessional and professional schools, and whether hospitals, attain such standards. It shall keep a record of its investigations and determinations with respect to all schools and hospitals and shall approve and enter in a proper register every school and every hospital attaining the prescribed standard or which had attained such standard during its existence. The Commission may redetermine from time to time the standing of any school or hospital and may revise its register accordingly. The Commission shall give no credit for any certificate, diploma, or degree emanating from any school, and it may refuse to give any credit for any certificate or diploma emanating from any hospital, not duly registered as provided by this chapter: *Provided*, That this requirement as to registration shall not apply in the case of persons applying for license on years of practice under the provisions of section 2-120.

(b) Notwithstanding the requirements of the preceding subsection relating to registration, in the case of persons presenting evidence of graduation from a medical school or training in a hospital not located in the United States, the commission is authorized to accept certificates from the Educational Council for Foreign Medical Graduates or other organizations approved by (1) the American Medical Association, (2) the Association of American Medical Colleges, (3) the Federation of State Medical Boards, and (4) the American Hospital Association as being qualified to examine and evaluate

the professional skill, training, and qualifications of graduates of foreign medical schools, such certificates to show that the applicants have successfully qualified under an American Medical Qualification Examination of such Educational Council for Foreign Medical Graduates, or an examination comparable in form and comprehensive coverage of subject matter to an American Medical Qualification Examination. (Feb. 27, 1929, 45 Stat. 1327, ch. 352, § 5; June 25, 1948, 62 Stat. 909, ch. 646, § 1; Aug. 1, 1950, 64 Stat. 393, ch. 513, § 1; Sept. 14, 1961, 75 Stat. 518, Pub. L. 87-248, § 1.)

##### AMENDMENT

1961—Sec. 1, act Sept. 14, 1961, inserted (a) before the first word of the first paragraph and added subsection (b) thereto. The first paragraph is transferred from section 2-103 of the Code. See note to section 2-103.

#### § 2-122. Evidence to be submitted with application—Licensing of those practicing before effective date of this chapter—Education and training.

Each applicant for a license to practice the healing art, to be issued after examination, shall submit with his application proof satisfactory to the Commission that he is not less than twenty-one years of age; that he is of good moral character; that he has had not less than two years of preprofessional education and training in a college or university acceptable to the Commission before entering on the study of the healing art; that he has been graduated from a professional school registered under this chapter; with the degree of doctor of medicine, doctor of osteopathy, or some equivalent degree; and, if required by the Commission, that he has had not less than one year of training in a hospital registered by the Commission under this chapter; *Provided*, That the commission shall by rule provide for determining whether an applicant who has been graduated from a professional school registered under this Act at a time when such school was not so registered may be admitted to examination, and such commission shall, in determining whether any such applicant shall be admitted to examination under this section, take into consideration whether the curriculum and the qualifications of the faculty of such school were substantially the same during the period the school was attended by the applicant as they were at the time the school first became registered under this Act, and if the commission shall so find, such applicant shall be admitted to examination: *Provided further*, That an applicant who has had the education and training required above, in preprofessional and professional schools, but whose graduation has been deferred by the professional school he last attended until after he has completed his training in a registered hospital, may be admitted to examination; but no license shall be issued to any such applicant until after he has been graduated from a registered school: *Provided fur-*



ther, That an applicant for a license to be issued after examination who was graduated before February 27, 1929, by a school registered under this chapter may, if otherwise qualified, be admitted to examination upon proof by the applicant of such preprofessional and professional education and training, and of such graduation, as were required by the laws of the District of Columbia regulating the practice of medicine and surgery at the time of such graduation: *Provided further*, That an applicant for a license to practice osteopathy and surgery who has been graduated as aforesaid prior to December 31, 1930, shall be examined and licensed on showing that he was graduated by a high school acceptable to the Commission before he entered on the study of osteopathy and that he in all other respects is qualified as aforesaid for examination: *And provided further*, That an applicant for a license to practice drugless healing, who has been graduated before December 31, 1935, may be admitted to examination on proof that before entering on the study of drugless healing he was graduated by a high school acceptable to the Commission and that he in all other respects is qualified as aforesaid for examination, and was graduated by a school registered under this chapter, teaching the method of healing that he intends to follow, with a degree appropriate to that method of healing, after not less than three graded courses of resident study and training of at least six months each. After December 31, 1935, every such applicant shall be required to submit, before he is referred to an examining board for examination, evidence of not less than two years' education in a college acceptable to the Commission and not less than four graded resident courses of professional study of not less than nine months each, in the same manner and to the same extent as are required of other applicants for licenses to practice the healing art.

An applicant for a license to practice midwifery shall submit proof, satisfactory to the Commission, that before beginning the study of midwifery she had been graduated by a high school acceptable to the Commission and thereafter studied midwifery in a school of midwifery registered under this chapter, for at least two graded courses of six months each, including attendance of not less than twenty-five cases of labor, and was duly graduated by that school. (Feb. 27, 1929, 45 Stat. 1336, ch. 352, § 26; Sept. 14, 1961, 75 Stat. 518, Pub. L. 87-248, § 2.)

#### AMENDMENT

1961—Section 2, act Sept. 14, 1961, amended section by (a) striking "studied the healing art through not less than four graded courses of not less than nine months each, in a professional school or schools registered under this Act [this chapter], and has been graduated by such a school", and inserting in lieu thereof "been graduated from a professional school registered under this Act" [this chapter]; and (b) by inserting immediately after "*Provided*," where it first appears in the section the following: "That the commission shall by rule provide for determining whether an applicant who has been graduated from a professional school registered under this Act [this chapter] at a time when such school was not so registered may be admitted to examination, and such commission shall, in determining whether any such applicant shall be admitted to examination under this section, take into consideration whether the curriculum and the qualifications of the faculty of such school were substantially the same during the period the school was

attended by the applicant as they were at the time the school first became registered under this Act [this chapter], and if the commission shall so find, such applicant shall be admitted to examination: *Provided further*,".

The section as so amended is set out above.

#### § 2-141. Delegation of functions of "Commission"—Definition.

Wherever the term "commission" is used in this chapter, such term shall mean the office or agency to which the Board of Commissioners of the District of Columbia, pursuant to the authority contained in Reorganization Plan Numbered 5 of 1952 (66 Stat. 824), has delegated or may from time to time delegate the functions required to be performed by this chapter. (Feb. 27, 1929, 45 Stat. 1340, ch. 352, § 50, as added, Sept. 14, 1961, 75 Stat. 519, Pub. L. 87-248, § 3.)

### Chapter 4.—NURSES AND PHYSICAL THERAPISTS

#### SUBCHAPTER III.—PHYSICAL THERAPISTS

##### Sec.

- 2-451. Definitions.
- 2-452. Exemption from registration.
- 2-453. Registration.
- 2-454. Powers of Commissioners.
- 2-455. Establishment of Board.
- 2-456. Powers and duties—Register of physical therapists, and approved schools—studies and investigations.
- 2-457. Registration of qualified applicants—Issuance of certificates.
- 2-458. Registration without examination.
- 2-459. Registration after examination.
- 2-460. Reciprocity.
- 2-461. Renewal of registration—Nonpracticing therapists.
- 2-462. Denial, revocation, and suspension of registration.
- 2-463. Court review.
- 2-464. Unauthorized practice of physical therapy.
- 2-465. Practice of registered physical therapists.
- 2-466. Enforcement—Penalties.
- 2-467. Conduct of prosecutions.
- 2-468. Fees and charges—Public hearings to change fees.
- 2-469. Severability.
- 2-470. Appropriations.
- 2-471. Reorganization.
- 2-472. Effective date.

#### § 2-425. Commissioners authorized to delegate functions.

##### TRANSFER OF FUNCTIONS

Reorganization Order No. 59 of the Board of Commissioners, dated June 30, 1953, as amended, established within the Department of Occupations and Professions, a Practical Nurses' Examining Board. There was delegated to said Examining Board the technical and professional functions vested in the Commissioners by sections 2-427 to 2-431 and section 2-433. The administrative functions authorized to be performed by such sections were delegated to the Director. The functions of adopting and prescribing rules and regulations were reserved to themselves by the Commissioners. The order is set out in the appendix to title 1.

#### SUBCHAPTER III.—PHYSICAL THERAPISTS

##### § 2-451. Definitions.

As used in this subchapter—

(a) The term "Commissioners" means the Commissioners of the District of Columbia sitting as a board, or their authorized agent or agents.

(b) The word "she" and the derivatives thereof shall be construed to include the word "he" and the derivatives thereof.

(c) The term "physical therapy" means the treatment of human disability, injury, or disease by supervised therapeutic procedures embracing the specific scientific application of physical measures to secure the functional rehabilitation of the human body. Nothing in this subchapter shall be construed as authorizing a physical therapist, whether registered or not, to practice medicine, osteopathy, chiropractic, naturopathy, or any other form or method of healing.

(d) The term "physical therapist" means a person who practices physical therapy under the prescription, supervision, and direction of a person licensed to practice under the Healing Arts Practice Act of the District of Columbia, approved February 27, 1929 (45 Stat. 1326), as amended.

(e) The word "State" or "States" shall be deemed to include any territory of the United States and the Commonwealth of Puerto Rico. (Sept. 22, 1961, 75 Stat. 578, Pub. L. 87-280, § 2.)

#### EFFECTIVE DATE

Subchapter effective 120 days after funds are appropriated for the purpose of administering this subchapter, see section 2-472.

#### REFERENCE IN TEXT

The Healing Arts Practice Act of the District of Columbia, referred to in the text, is set out in title 2, ch. 1, of the D.C. Code.

#### SHORT TITLE

Section 1 of act Sept. 22, 1961, provided that: "This Act [this subchapter] may be cited as the 'Physical Therapists Practice Act'".

#### § 2-452. Exemption from registration.

This subchapter shall not apply to any person employed in the District of Columbia by the Federal Government or any agency thereof while such person is acting in the discharge of her official duties. (Sept. 22, 1961, 75 Stat. 578, Pub. L. 87-280, § 3.)

#### EFFECTIVE DATE

See section 2-472.

#### § 2-453. Registration.

(a) No person shall practice physical therapy in the District of Columbia unless (1) she is duly registered in accordance with the provisions of this subchapter, or (2) is exempted from such registration by the terms of this subchapter.

(b) No person not registered in accordance with the provisions of this subchapter, unless exempted from registration by the terms of this subchapter, shall, directly or indirectly, (1) represent herself to be so registered or (2) represent herself to be certified, licensed, or authorized to practice physical therapy.

(c) No person shall use in connection with her name the words "physical therapist", "physiotherapist", "physical therapy technician", or use the initials "P.T.", "P.T.T.", "R.P.T.", or any other letters, words, abbreviations, or insignia indicating or implying that she is a registered physical therapist, unless such person is a holder of a valid registration under this subchapter.

(d) Nothing in this section shall prohibit any person duly licensed or registered in the District of Columbia under any other Act from engaging in the practice for which she is duly registered or licensed.

(e) Nothing in this subchapter shall apply to any person licensed under the Healing Arts Practice Act of the District of Columbia, nor to any employee of any such person working under his immediate supervision and direction in his private office, provided no such employee shall hold herself out, or otherwise represent herself to be a physical therapist. (Sept. 22, 1961, 75 Stat. 578, Pub. L. 87-280, § 4.)

#### REFERENCE IN TEXT

The Healing Arts Practice Act of the District of Columbia is set out in title 2, ch. 1, of the D.C. Code.

#### EFFECTIVE DATE

See section 2-472.

#### § 2-454. Powers of Commissioners.

The Commissioners are hereby vested with full power and authority to delegate, from time to time, to their designated agent or agents, any of the functions vested in them by this subchapter. (Sept. 22, 1961, 75 Stat. 579, Pub. L. 87-280, § 5.)

#### EFFECTIVE DATE

See section 2-472.

#### § 2-455. Establishment of board.

The Commissioners may establish a physical therapists examining board to perform any of the functions vested in the Commissioners by this subchapter, and, if so established, such board shall be composed of such persons possessing such qualifications as the Commissioners shall determine. The Commissioners are authorized to prescribe the terms of office of members of such board and to fix the compensation of such members. The Commissioners may appoint as members of such board, Federal and District government employees, and such members shall not be entitled to receive compensation as board members, and any such member shall not be debarred by such membership from employment in the Federal or District governments not inconsistent with her duties as a board member. Any board member may receive her compensation as a board member as well as any retirement pay, retirement compensation, or annuity to which she may be entitled on account of previous service rendered to the United States or the District of Columbia governments. (Sept. 22, 1961, 75 Stat. 579, Pub. L. 87-280, § 6.)

#### EFFECTIVE DATE

See section 2-472.

#### § 2-456. Powers and duties—Register of physical therapists and schools—Studies and investigations.

(a) The Commissioners are authorized to adopt from time to time and prescribe such rules and regulations as may be necessary to enable them to carry into effect the provisions of this subchapter. The Commissioners shall maintain a register of all persons registered as physical therapists. The Commissioners shall maintain a register of approved schools which they deem afford adequate training in physical therapy.

(b) The Commissioners may make such studies and investigations, and obtain or require the furnishing of such information under oath or affirmation or otherwise, as they deem necessary or proper to assist them in prescribing any regulation or order under this subchapter, or in the administra-



tion and enforcement of this subchapter, and regulations and orders thereunder. For such purposes, the Commissioners may administer oaths and affirmations, may require by subpoena or otherwise the attendance and testimony of witnesses and the production of documents at any designated place. In the event of contumacy or refusal to obey any such subpoena or requirement under this section, the Commissioners may make application to the municipal court for the District of Columbia for an order requiring obedience thereto. Thereupon the court, with or without notice and hearing, as it in its discretion may decide, shall make such order as is proper and may punish as a contempt any failure to comply with such order in accordance with the provisions of section 11-756(c). (Sept. 22, 1961, 75 Stat. 579, Pub. L. 87-280, § 7.)

## EFFECTIVE DATE

See section 2-472.

### § 2-457. Registration of qualified applicants—Issuance of certificates.

The Commissioners shall register as physical therapists all applicants who prove to the satisfaction of the Commissioners their fitness for registration under the terms of this subchapter. The Commissioners shall issue to each person registered a certificate of registration, which shall be prima facie evidence of the right of the person to whom it is issued to represent herself as a registered physical therapist, and authorized to practice as such under this subchapter. (Sept. 22, 1961, 75 Stat. 580, Pub. L. 87-280, § 8.)

## EFFECTIVE DATE

See section 2-472.

### § 2-458. Registration without examination.

The Commissioners shall register as a physical therapist, without examination, any physical therapist who is at least twenty years of age and of good moral character and who presents evidence satisfactory to the Commissioners that she was, prior to the effective date of this subchapter, practicing physical therapy in the District of Columbia for a period of two years immediately preceding the effective date of this subchapter, and that she (1) has graduated from an approved school of physical therapy listed in the register of approved schools or (2) received comparable training or experience in the practice of physical therapy as determined by the Commissioners. Application for registration under this section shall be made on or before the expiration of one year from the effective date of this subchapter. (Sept. 22, 1961, 75 Stat. 580, Pub. L. 87-280, § 9.)

## EFFECTIVE DATE

See section 2-472.

### § 2-459. Registration after examination.

The Commissioners shall pass upon the qualifications of applicants for registration, provide for and conduct all examinations, determine which applicants have successfully passed the examination and duly register such applicants. To be eligible to be examined for registration as a physical therapist, an applicant must meet the following requirements:

(a) Be at least twenty years old.

(b) Be of good moral character.

(c) Be in good physical and mental health, as certified by a physician licensed to practice in the District of Columbia.

(d) Be a graduate of an approved school of physical therapy listed in the register of approved schools; or possess comparable educational qualifications as determined by the Commissioners.

The examinations specified in this section shall be conducted at such times and places as the Commissioners may determine, and notice of time and place of such examination shall be published not less than thirty days before the first day of each examination in one or more newspapers of local circulation.

The examination shall embrace such coverage of the following subjects to determine the applicant's qualification: The applied sciences of anatomy, neuroanatomy, kinesiology, physiology, pathology, physics; "physical therapy" as defined in this subchapter, applied to medicine, neurology, orthopedics, pediatrics, psychiatry, surgery; medical ethics; technical procedures in the practice of "physical therapy" as defined in this subchapter. (Sept. 22, 1961, 75 Stat. 580, Pub. L. 87-280, § 10.)

## EFFECTIVE DATE

See section 2-472.

### § 2-460. Reciprocity.

Any applicant who has practiced physical therapy and has been registered, certified, or licensed as such in any State may, upon proof of good moral character, be registered without examination, provided the applicant has graduated from a school of physical therapy approved by the Commissioners, or has received competent comparable training as determined by the Commissioners. It is intended that the standards of education and training required for registration under this section shall be substantially equivalent to those required for registration pursuant to section 2-459. This section shall be construed to apply only to candidates from States which admit registered physical therapists of the District of Columbia without examination. (Sept. 22, 1961, 75 Stat. 580, Pub. L. 87-280, § 11.)

## EFFECTIVE DATE

See section 2-472.

### § 2-461. Renewal of registration—Nonpracticing therapists.

(a) Every registered physical therapist engaged in or who proposes to engage in the practice of physical therapy in the District of Columbia is hereby required to register with the Commissioners annually. Any registrant who allows her registration to lapse by failing to renew the registration annually may be reinstated by the Commissioners by showing cause satisfactory to the Commissioners for such failure and upon payment of all required fees. The Commissioners are authorized, after public hearing, to change from time to time the period for which registration or renewal thereof may be issued.

(b) Any person registered under the provisions of this subchapter but not so practicing in the District of Columbia shall give written notice of such fact to the Commissioners. Upon receipt of such notice, the Commissioners shall place the name of



such person upon the nonpracticing list. While remaining on such list, such person shall not be subject to the payment of any renewal fee and shall not hold herself out as a registered physical therapist nor practice as such in the District of Columbia. Application for renewal of registration and payment of renewal fee for the current year shall be made to the Commissioners by any such person desiring to resume practice as a registered physical therapist. (Sept. 22, 1961, 75 Stat. 581, Pub. L. 87-280, § 12.)

## EFFECTIVE DATE

See section 2-472.

## § 2-462. Denial, revocation, and suspension of registration.

The Commissioners are authorized and empowered to deny, revoke, or suspend any registration or certificate of renewal of registration issued by the Commissioners or applied for in accordance with the provisions of this subchapter if the applicant or holder thereof—

(1) has been guilty of fraud or deceit in procuring or attempting to procure any registration or renewal thereof provided for in this subchapter;

(2) has been convicted of a crime involving moral turpitude;

(3) is an intemperate consumer of intoxicating liquors or is addicted to the use of habit-forming drugs;

(4) has been guilty of unprofessional conduct;

(5) has willfully violated any of the provisions of this subchapter, or rules or regulations promulgated by the Commissioners pursuant to authority contained in this subchapter;

(6) is mentally incompetent;

(7) is guilty of undertaking to treat ailments of human beings other than by physical therapy as authorized by this subchapter, or the undertaking to practice physical therapy independent of the prescription and direction of a person appropriately licensed to practice under the Healing Arts Practice Act of the District of Columbia; or

(8) is otherwise professionally incapacitated.

*Provided*, That such denial, revocation, or suspension shall be made only upon specific charges in writing. A copy of any such charges and at least ten days' notice of the hearing of the same shall be mailed to the holder of or applicant for such registration, addressed to her at her last known address. (Sept. 22, 1961, 75 Stat. 581, Pub. L. 87-280, § 13.)

## REFERENCE IN TEXT

The Healing Arts Practice Act of the District of Columbia referred to in text is set out in title 2, ch. 1, of the D.C. Code.

## EFFECTIVE DATE

See section 2-472.

## § 2-463. Court review.

Any person aggrieved by any final decision or final order of the Commissioners denying, suspending, or revoking any registration, or renewal of registration, issued or applied for under this subchapter may obtain a review thereof in the municipal court of appeals for the District of Columbia, and may seek a review by the United States Court of Appeals for the District of Columbia Circuit of any

judgment of the municipal court of appeals entered pursuant to its review of any such decision or order, all in accordance with subsection (f) of section 11-772. (Sept. 22, 1961, 75 Stat. 582, Pub. L. 87-280, § 14.)

## EFFECTIVE DATE

See section 2-472.

## § 2-464. Unauthorized practice of physical therapy.

It shall be unlawful for any person in the District of Columbia to—

(a) sell or fraudulently obtain or furnish any diploma, license, certificate of registration, or record required by this subchapter, or required by the Commissioners under authority of this subchapter, or aid or abet in the selling, fraudulently obtaining, or furnishing thereof;

(b) practice physical therapy under cover of any diploma, certificate of registration, or record required by this subchapter or required by the Commissioners under authority of this subchapter, illegally or fraudulently obtained or signed or issued unlawfully or under fraudulent registration;

(c) use in connection with her name any designation tending to imply that she is a registered physical therapist unless duly registered under provisions of this subchapter;

(d) practice physical therapy during the time her registration shall be suspended or revoked. (Sept. 22, 1961, 75 Stat. 582, Pub. L. 87-280, § 15.)

## EFFECTIVE DATE

See section 2-472.

## § 2-465. Practice of registered physical therapists.

A person registered under this subchapter as a physical therapist shall not treat human ailments by physical therapy or otherwise except under the prescription and direction of a person duly licensed or registered under the Healing Arts Practice Act of the District of Columbia. (Sept. 22, 1961, 75 Stat. 582, Pub. L. 87-280, § 16.)

## REFERENCE IN TEXT

The Healing Arts Practice Act of the District of Columbia, is set out in title 2, ch. 1, of the D.C. Code.

## EFFECTIVE DATE

See section 2-472.

## § 2-466. Enforcement—Penalties.

Any person who shall violate the provisions of section 2-453, 2-464, or 2-465 of this chapter shall be guilty of a misdemeanor and shall be punished by a fine of not exceeding \$500 or by imprisonment for not more than one year, or both. (Sept. 22, 1961, 75 Stat. 582, Pub. L. 87-280, § 17.)

## EFFECTIVE DATE

See section 472.

## § 2-467. Conduct of prosecutions.

(a) Prosecutions for violations of any provisions of section 2-453, 2-464, or 2-465 of this subchapter shall be conducted in the name of the District of Columbia in the municipal court for the District of Columbia, by the Corporation Counsel or any of his assistants.

(b) It shall be necessary to prove in any prosecution or hearing under this subchapter only a single

act prohibited by law or a single holding out or an attempt without proving a general course of conduct in order to constitute a violation. (Sept. 22, 1961, 75 Stat. 582, Pub. L. 87-280, § 18.)

## EFFECTIVE DATE

See section 2-472.

### § 2-468. Fees and charges—Public hearings to change fees.

(a) The Commissioners are authorized and empowered, after a public hearing, to fix and, from time to time increase or decrease, fees for any services rendered under this subchapter. The Commissioners shall, pursuant to this section, increase decrease, or fix fees in such amounts as will, in the judgment of the Commissioners, approximate the costs to the District of Columbia of administering this subsection: *Provided*, That no fee shall be increased, decreased, or fixed except after a public hearing.

(b) Upon the change of a registration period as authorized by subsection (a) of section 2-461 the fee for registration or renewal of registration shall be prorated on the basis of the time covered.

(c) All moneys collected for fees and charges made pursuant to authority contained in this subchapter shall be paid into the Treasury to the credit of the District of Columbia. (Sept. 22, 1961, 75 Stat. 583, Pub. L. 87-280, § 19.)

## EFFECTIVE DATE

See section 2-472.

### § 2-469. Severability.

If any provision of this subchapter, or the application thereof to any person or circumstance, is held invalid, the remainder of the subchapter, and the application of such provision to other persons and circumstances, shall not be affected thereby. (Sept. 22, 1961, 75 Stat. 583, Pub. L. 87-280, § 20.)

## EFFECTIVE DATE

See section 2-472.

### § 2-470. Appropriations.

There is hereby authorized to be appropriated out of the revenues of the District of Columbia such sums as may be necessary to pay the expenses of administering and carrying out the purposes of this subchapter. (Sept. 22, 1961, 75 Stat. 583, Pub. L. 87-280, § 21.)

## EFFECTIVE DATE

See section 2-472.

### § 2-471. Reorganization.

Nothing in this subchapter shall be construed so as to affect the authority vested in the Board of Commissioners of the District of Columbia by Reorganization Plan Numbered 5 of 1952 (66 Stat. 824). The performance of any function vested by this subchapter in the Board of Commissioners or in any office or agency under the jurisdiction and control of said Board of Commissioners may be delegated

by said Board of Commissioners in accordance with section 3 of such plan. (Sept. 22, 1961, 75 Stat. 583, Pub. L. 87-280, § 22.)

## EFFECTIVE DATE

See section 2-472.

### § 2-472. Effective date.

This subchapter shall take effect one hundred and twenty days after funds are appropriated for the purpose of administering the provisions of this subchapter. (Sept. 22, 1961, 75 Stat. 583, Pub. L. 87-280, § 23.)

## Chapter 18.—PROFESSIONAL ENGINEERS

### § 2-1810. Exemptions.

#### NOTES TO DECISIONS

Burden of proving exception 1  
Practice of engineering by corporation 2

#### 1. Burden of proving exception

Fact that Professional Engineers' Registration Act excepts from its provisions practice of any other legally recognized profession did not require that information allege and that prosecution prove that defendant was not within exception, and defendant had burden of proving that it was within exception. *T.V. Engineers, Inc. v. District of Columbia* (D.C. Mun. App. 1961, 166 A. 2d 920).

#### 2. Practice of engineering by corporation

Corporation could be convicted under provision of Professional Engineers' Registration Act making it misdemeanor for anyone to represent himself to be professional engineer without being registered as provided in the act, though only natural person may be registered under act. *T.V. Engineers, Inc. v. District of Columbia* (D.C. Mun. App. 1961, 166 A. 2d 920).

### § 2-1814. Penalties.

#### NOTES TO DECISIONS

Burden of proving exception 1  
Practice of engineering by corporation 2  
Violation question of fact 3

#### 1. Burden of proving exception

Fact that Professional Engineers' Registration Act excepts from its provisions practice of any other legally recognized profession did not require that information allege and that prosecution prove that defendant was not within exception, and defendant had burden of proving that it was within exception. *T.V. Engineers, Inc., v. District of Columbia* (D.C. Mun. App. 1961, 166 A. 2d 920).

#### 2. Practice of engineering by corporation

Corporation could be convicted under provision of Professional Engineers' Registration Act making it misdemeanor for anyone to represent himself to be professional engineer without being registered as provided in the act, though only natural person may be registered under act. *T.V. Engineers, Inc., v. District of Columbia* (D.C. Mun. App. 1961, 166 A. 2d 920).

#### 3. Violation question of fact

Question whether use of name "T.V. Engineers Inc.," by corporation which employed no professional engineers, violated provision of Professional Engineers' Registration Act making it misdemeanor for anyone to represent himself to be professional engineer without being registered, was factual determination for trial court. *T.V. Engineers, Inc. v. District of Columbia* (D.C. Mun. App. 1961, 166 A. 2d 920).



## TITLE 4.—POLICE AND FIRE DEPARTMENTS

### Chapter 1.—METROPOLITAN POLICE

#### § 4-106. Classification of officers and privates of police department—Duties of each.

##### AMENDMENT

1961—Act June 27, 1961, Pub. L. 87-60, struck out the words "two thousand five hundred officers and members" in the last sentence and inserted in lieu thereof the words "three thousand officers and members"

#### § 4-140. Arrests without warrant.

##### NOTES TO DECISIONS

##### 3. Arrest without warrant

Court in prosecution for unlawful entry was not required to inquire into legality or illegality of defendant's arrest, where no evidence was obtained in lieu thereof arrest. *L. E. Smith v. United States* (D.C. Mun. App. 1961, 173 A.2d 739).

### Chapter 4.—FIRE DEPARTMENT

##### Sec.

4-404a. Workweek established—Hours—Day off—Holidays—Exceptions.

4-408a. Recording annual and sick leave.

#### § 4-404a. Workweek established—Hours—Days off—Holidays—Exceptions.

(a) The Commissioners of the District of Columbia are authorized and directed to establish a workweek for officers and members of the firefighting division of the Fire Department of the District of Columbia which will result in an average workweek of fifty-six hours in any complete work cycle: *Provided*, That no workweek shall exceed seventy-two hours.

(b) The firefighting division shall operate under a two-shift system and all hours of duty of any shift shall be consecutive.

(c) The Commissioners of the District of Columbia are further authorized and directed to establish a workweek for officers and members of the Fire Department, other than those in the firefighting division of forty hours, and the hours of work in such workweek shall be performed on consecutive days in such workweek.

(d) The days off duty to which each officer or member of the Fire Department is entitled shall be in addition to his annual leave and sick leave allowed by law. In the case of any shift of the Fire Department beginning on one day and extending without a break in continuity into the next day, or in the case of two shifts beginning on the same day, the Commissioners are authorized to designate the shift which shall be the workday, and the entire shift so designated shall be considered the workday for all pay and leave purposes.

(e) If a holiday shall fall on any day off of any officer or member of the Fire Department, he shall be excused from duty on such other day as is designated by the Commissioners of the District of Columbia, and if he is required to be on duty in lieu

of such day off, he shall receive compensation for such duty at the rate provided by law for duty performed on a holiday. When any shift of the Fire Department begins on the day before a holiday and extends without a break in continuity into the holiday, or begins on a holiday and extends without a break in continuity into the next day, the Commissioners of the District of Columbia are authorized to designate either of such shifts as the holiday workday, and the entire shift so designated shall be considered as the holiday workday for all pay and leave purposes. As used in this subsection the word "holiday" shall have the same meaning as such word has in section 4-808, and as supplemented by section 1-1210.

(f) Notwithstanding the provisions of the preceding subsection, whenever the Commissioners declare that an emergency exists of such a character as to necessitate the continuous service of all or some of the officers and members of the Fire Department, the granting of days off shall be suspended during the continuation of such emergency. Whenever the granting of days off has been suspended and discontinued pursuant to this subsection, each officer and member shall be entitled to receive, in addition to his annual basic salary, compensation at the basic daily rate for each day of duty which he performs by reason of the suspension and discontinuance of his days off under this subsection. Any officer or member so performing duty shall be entitled to all rights, benefits, and privileges, and shall be subject to all obligations and duties, to which he is entitled or to which he is subject on any regular workday. Additional compensation paid under this subsection shall not be considered as salary for the purpose of computing retirement compensation or relief payments under section 12 of the Act entitled "An Act making appropriations to provide for the expenses of the government of the District of Columbia for the fiscal year ending June thirtieth, nineteen hundred and seventeen, and for other purposes", approved September 1, 1916, as amended, nor shall such additional compensation be subject to deduction as provided in section 5 of the Act entitled "An Act to fix the salaries of officers and members of the Metropolitan Police force and the Fire Department of the District of Columbia", approved July 1, 1930, as amended. (June 19, 1948, 62 Stat. 498, ch. 530, § 2; Aug. 4, 1955, 69 Stat. 491, ch. 549, § 2; Oct. 5, 1961, 75 Stat. 830, Pub. L. 87-399, §§ 1, 2.)

##### REFERENCES IN TEXT

Section 12 of act Sept. 1, 1916, as amended, referred to in subsec. (b), formerly classified to sections 4-113, 4-114, 4-501, 4-503, 4-506, 4-507, 4-508 to 4-510, and 4-512 to 4-514, was completely amended by act Aug. 21, 1957, 71 Stat. 391, Pub. L. 85-157, § 3, and is now classified to sections 4-521 to 4-535.

Section 5 of act July 1, 1930, as amended, referred to in the text, formerly classified to sections 4-503 and 4-504, was repealed by act Aug. 21, 1937, 71 Stat. 399, Pub. L. 85-157, § 5 (2), and is now covered by section 4-524.

#### AMENDMENTS

1961—Section 1, act Oct. 5, 1961, amended subsection (a) to read as set out in (a), (b), (c), (d), and (e). The wording of subsection (a) prior to this amendment is set out in the main volume of the Code.

Section 2 of the same act amended the first sentence of former subsection (b) to read as above set out in subsection (f), the said subsection having been redesignated as (f) by the same act.

1955—Subsec. (b) amended by act Aug. 4, 1955, which added the matter following the first sentence.

#### EFFECTIVE DATE OF 1961 AMENDMENT

Section 7 of act Oct. 5, 1961, provided: "This Act [amending this section and sections 4-807, 4-821, 4-904, and adding 4-408a] shall take effect on the first day of the first full pay period which begins at least sixty days after the date of approval of this Act" [Oct. 5, 1961].

#### EFFECTIVE DATE OF 1955 AMENDMENT

Section 3 of act Aug. 4, 1955, provided: "This Act [amending this section and section 4-904] shall take effect on July 1, 1955."

#### TRANSFER OF FUNCTIONS

Fire Chief as successor to Chief Engineer, see note under section 4-402.

#### CROSS REFERENCES

Firemen excluded from general law concerning sick leave for District employees, but included as to annual leave, see § 1-312.

Formula for recording annual and sick leave, see § 4-408a.

Other provisions concerning leave, see § 4-408.

Policemen and firemen's retirement and disability, see § 4-521 et seq.

#### § 4-408a. Recording annual and sick leave.

(a) For the purpose of recording annual and sick leave on the hourly basis for officers and members of the firefighting division of the Fire Department of the District of Columbia, the workday of any work-week shall be considered to be twelve hours.

(b) For the purposes of recording on an hourly basis annual and sick leave taken by officers and members of the firefighting division, the following formula shall be used:

(1) During the day shift of ten hours, one and two-tenths hours of leave shall be charged for each hour taken.

(2) During the night shift of fourteen hours, twelve-fourteenths of an hour of leave shall be charged for each hour taken, calculated to the nearest fractional tenth.

(Oct. 5, 1961, 75 Stat. 832, Pub. L. 87-399, § 6.)

#### EFFECTIVE DATE

Act Oct. 5, 1961, enacting this section and amending sections 4-404a, 4-807, 4-821, and 4-904 provided as follows:

"This Act shall take effect on the first day of the first full pay period which begins at least sixty days after the date of approval of this Act" [Oct. 5, 1961.]

### Chapter 5.—POLICEMEN AND FIREMEN'S RETIREMENT AND DISABILITY

#### § 4-528. Optional retirement—Conditions—Suspension of retirement provisions during emergency.

#### NOTES TO DECISIONS

2. Right to retirement.

Fireman suspended for misconduct was still a "member" of fire department within statute providing that any

member attaining age of 50 years and completing 20 years of service may state intention to retire and shall be entitled to annuity and fireman, who had not been discharged, had absolute right to elect retirement. *E. J. Daigle v. Robert E. McLaughlin et al.* (1961, 193 F. Supp. 902).

### Chapter 8.—SALARIES

#### § 4-807. Additional compensation for working on holidays.

Under regulations promulgated by the Commissioners of the District of Columbia each officer and member of the Metropolitan Police force and of the Fire Department of the District of Columbia when he may be required to work on any holiday, shall be compensated for such duty, excluding periods when he is in a leave status, in lieu of his regular rate of basic compensation for such work, at the rate of twice such regular rate of basic compensation: *Provided*, That for the purpose of sections 4-807 to 4-809, each such officer or member who works eight hours or less on any holiday shall be compensated for such duty in addition to his regular rate of basic compensation for such work, at the rate of one-eighth of his daily rate of basic compensation for each hour so worked, computed to the nearest hour, counting thirty minutes or more as a full hour: *Provided further*, That the total compensation to be paid any such officer or member for duty performed on a holiday shall not exceed an amount equal to twice the daily rate of pay to which such officer or member shall be entitled for performing one regular tour of duty on a day other than a holiday: *And provided further*, That no such officer or member shall be entitled to additional compensation for such holiday work for any day for which he is entitled to receive additional compensation under the provisions of subsection (e) of section 4-904. So much of the compensation for such holiday work as is in excess of the regular pay for such day shall not be considered as salary for the purpose of computing deductions for life insurance or for computing annuity payments under the provisions of the Policemen and Firemen's Retirement and Disability Act (sections 4-521 to 4-535), nor shall such excess compensation be subject to deduction as provided in sections 4-521 to 4-535. Appropriations for personal services for the Metropolitan Police force, the Fire Department of the District of Columbia, the White House Police force, and the United States Park Police force shall be available for payment of the additional compensation authorized by sections 4-807 to 4-809. (Oct. 24, 1951, 65 Stat. 607, ch. 544, § 1; July 18, 1958, 72 Stat. 377, Pub. L. 85-533, § 4(a); Oct. 5, 1961, 75 Stat. 831, Pub. L. 87-399, § 4.)

#### AMENDMENT

1961—Section 4, act Oct. 5, 1961, amended this section to read as above set out. The provisions of the section prior to this amendment are set out in the main volume of this code.

#### EFFECTIVE DATE OF 1961 AMENDMENT

See note under section 4-404a.



## § 4-821. Computation of rates of compensation.

(b) Whenever for any such purpose it is necessary to convert a basic annual rate established by this Act or the District of Columbia Police and Firemen's Salary Act of 1958 to basic biweekly, weekly, daily, half-daily, or hourly rate, the following rules shall govern:

(A) The annual rate shall be divided by fifty-two or twenty-six, as the case may be, to derive a weekly or biweekly rate;

(B) A weekly or biweekly rate shall be divided by five or ten, as the case may be, to derive a daily rate;

(C) A daily rate shall be divided by two to derive a one-half daily rate; and

(D) In the case of the Metropolitan Police force, except with respect to computation of holiday pay, a biweekly rate shall be divided by the number of hours constituting the biweekly tour of duty in order to derive an hourly rate.

(E) In the case of the firefighting division of the Fire Department of the District of Columbia, except with respect to computation of holiday pay, the weekly or biweekly rate shall be divided by 56 or 112, as the case may be, to derive an hourly rate.

(F) In the case of officers and members of divisions of the Fire Department of the District of Columbia other than the firefighting division, except with respect to computation of holiday pay, a biweekly rate shall be divided by the number of hours constituting the biweekly tour of duty in order to derive an hourly rate.

All rates shall be computed to the nearest cent, counting one-half cent and over as a whole cent. (As amended Oct. 5, 1961, 75 Stat. 831, Pub. L. 87-399, § 5.)

## AMENDMENT

1961—Section 5, act Oct. 5, 1961, amended clause (D) of subsection (b) to read as above set out under clauses (D), (E), and (F). The wording of clause (D) prior to amendment is set out in the main volume of the code.

## EFFECTIVE DATE OF 1961 AMENDMENT

See note under section 4-404a.

## Chapter 9.—MISCELLANEOUS PROVISIONS

Sec.

4-904. Five-day week established for officers and members of Metropolitan Police, Fire Department of the District of Columbia, United States Park Police and White House Police—Suspension during emergencies—Additional compensation.

§ 4-904. Five-day week established for officers and members of Metropolitan Police, Fire Department of the District of Columbia, United States Park Police and White House Police—Suspension during emergencies—Additional compensation.

(e) For each day a vacancy exists in the personnel strength for which funds are appropriated by applicable appropriation acts current in any fiscal year in any particular rank of the Metropolitan Police force, the Fire Department of the District of Columbia, the United States Park Police force, or the White House Police force, the Chief of Police, the Fire Chief, the Secretary of the Interior, and the Chief of the Secret Service Division may permit an officer or member of their respective forces of such rank voluntarily to perform duty on any day off granted under this section. Each such officer or member shall be entitled to receive, in addition to his annual basic salary, compensation at the basic daily rate for each day of duty voluntarily performed under this subsection, such additional compensation to be paid from current appropriations. Any officer or member so volunteering to perform duty on a day off shall be entitled to all rights, benefits, and privileges, and shall be subject to all obligations and duties, to which he is entitled or to which he is subject on any regular workday. Additional compensation paid under this subsection shall not be considered as salary for the purpose of computing retirement compensation or relief payments under section 12 of the Act entitled "An Act making appropriations to provide for the expenses of the government of the District of Columbia for the fiscal year ending June thirtieth, nineteen hundred and seventeen, and for other purposes", approved September 1, 1916, as amended, nor shall such additional compensation be subject to deduction as provided in such section. (As amended, Oct. 5, 1961, 75 Stat. 831, Pub. L. 87-399, § 3.)

## REFERENCES IN TEXT

Section 12 of Act Sept. 1, 1916, as amended, referred to in subsection (e) is set out in sections 4-521 to 4-535.

## AMENDMENT

1961—Section 3, act Oct. 5, 1961, amended subsection (e) as follows:

(a) By inserting "the Fire Department of the District of Columbia" after "Metropolitan Police force,,"; (b) by striking "Major and Superintendent of Police,,"; and inserting in lieu thereof "Chief of Police, the Fire Chief,,"; and (c) by striking therefrom "section 5 of the Act entitled 'An Act to fix the salaries of officers and members of the Metropolitan Police force and the Fire Department of the District of Columbia', approved July 1, 1930, as amended", and inserting in lieu thereof "such section".

## EFFECTIVE DATE OF 1961 AMENDMENT

See note to section 4-404a.





## TITLE 5.—BUILDING RESTRICTIONS AND REGULATIONS

### Chapter 1.—ALLEY DWELLINGS

#### § 5-105a. Disposition of receipts from sales, leases, etc.

All receipts derived from sales, leases, or other sources shall be covered into the Treasury of the United States monthly. (Aug. 17, 1961, 75 Stat. 355, Pub. L. 87-141, title I, § 101.)

#### SIMILAR PROVISIONS

Section is from the Independent Offices Appropriation act 1962, act Aug. 17, 1961. Similar provisions were contained in the following appropriation act.

1961—July 12, 1960, 74 Stat. 436, Pub. L. 86-626, title I, § 101. For earlier similar provisions see main volume of Code.

### Chapter 4.—ZONING AND HEIGHT OF BUILDINGS

#### § 5-405. Width of street to govern height—Business streets—Residence streets—Corner lots—Fire-proof requirements—Dean Tract—Restrictions and limitations applicable to specific property.

#### AMENDMENT

Act Sept. 22, 1961, 75 Stat. 583, Pub. L. 87-281, § 1, amended the third paragraph of the section by striking out the words, "over eight stories in height or".

#### § 5-411. Plats of restricted area to be prepared.

#### NOTES TO DECISIONS

##### 1. Adjacent

Under statute giving Commission of Fine Arts duty of approving alteration of buildings adjacent to public buildings of major importance and when part of property fronts or abuts on portion of Pennsylvania Avenue extending from Capitol to White House, property located on Thirteenth Street Northwest was "adjacent" and did "front" on Pennsylvania Avenue within contemplation of statute. *Stanley Company of America Inc., et al. v. R. E. McLaughlin et al.* (1961, 195 F. Supp. 519).

### Chapter 5.—UNSAFE STRUCTURES

#### § 5-501. Structure reported unsafe, to be examined by inspector of buildings—If unsafe, notice to be given to make same secure—If safety requires, inspector may make secure.

#### NOTES TO DECISIONS

##### 2. Party wall

District of Columbia Code provision authorizing District to make structures safe at owners' expense applied to party wall which had been in unsafe condition before its condition was revealed by one owner's razing. *District of Columbia and First Baptist Church of the City of Washington, D.C. v. J. B. Wentworth* (1961, 288 F. 2d 421, 110 U.S. App. D.C. 19).

#### § 5-502. If dangers not remedied, premises to be surveyed by three disinterested persons—Report.

#### NOTES TO DECISIONS

##### 1. Party wall

District of Columbia Code provision authorizing District to make structures safe at owners' expense ap-

plied to party wall which had been in unsafe condition before its condition was revealed by one owners' razing. *District of Columbia and First Baptist Church of the City of Washington, D.C., v. J. B. Wentworth* (1961, 288 F. 2d 421, 110 U.S. App. D.C. 19).

#### § 5-503. Inspector of buildings to make structure safe if responsible person does not—Cost and expense—How assessed—Neglect of lessee—Rights of lessor.

#### NOTES TO DECISIONS

##### 1. Party wall

District of Columbia Code provision authorizing District to make structures safe at owners' expense applied to party wall which had been in unsafe condition before its condition was revealed by one owners' razing. *District of Columbia and First Baptist Church of the City of Washington, D.C. v. J. B. Wentworth* (1961, 288 F. 2d 421, 110 U.S. App. D.C. 19).

### Chapter 7.—HOUSING REDEVELOPMENT

#### § 5-701. General purposes.

#### NOTES TO DECISIONS

##### 3. Tort Actions

The District of Columbia Redevelopment Land Agency is a Federal agency within meaning of the Federal Tort Claims Act, and suits based on torts allegedly committed by the Agency or its employees acting in an official capacity are maintainable, if at all, under the Tort Claims Act, and must name the United States as defendant. *C. R. Goddard v. District of Columbia Redevelopment Land Agency etc.* (1961, 287 F. 2d 343, 109 U.S. App. D.C. 304).

#### § 5-704. Power to acquire and assemble real property.

#### NOTES TO DECISIONS

##### 7.50. Tort Actions

The District of Columbia Redevelopment Land Agency is a Federal agency within meaning of the Federal Tort Claims Act, and suits based on torts allegedly committed by the Agency or its employees acting in an official capacity are maintainable, if at all, under the Tort Claims Act, and must name the United States as defendant. *C. R. Goddard v. District of Columbia Redevelopment Land Agency etc.* (1961, 287 F. 2d 343, 109 U.S. App. D.C. 304).

#### § 5-715. Appropriations authorized.

#### NOTES TO DECISIONS

##### 1. Tort Actions

The District of Columbia Redevelopment Land Agency is a Federal agency within meaning of the Federal Tort Claims Act, and suits based on torts allegedly committed by the Agency or its employees acting in an official capacity are maintainable, if at all, under the Tort Claims Act, and must name the United States as defendant. *C. R. Goddard v. District of Columbia Redevelopment Land Agency etc.* (1961, 287 F. 2d 343, 109 U.S. App. D.C. 304):



## TITLE 7.—HIGHWAYS, STREETS, BRIDGES

### Chapter 12.—MISCELLANEOUS

#### § 7-1218. Branch tracks, spurs, or sidings authorized—Plats or charts kept on file.

\* \* \* \* \*

BRANCH SIDINGS OVER FIRST STREET SOUTHWEST

That the Philadelphia, Baltimore, and Washington Railroad Company is hereby authorized to construct, maintain, and operate at grade two branch sidings from its present tracks in square 607 over First Street to square 663 between S and T Streets Southwest, Washington, D.C. Such sidings shall be constructed in accordance with plans approved by the Commissioners of the District of Columbia.

Sec. 2. Congress reserves the right to alter, amend, or repeal this Act. (Sept. 26, 1961, 75 Stat. 686, Pub. L. 87-325, §§ 1, 2.)

### Chapter 14.—PUBLIC AIRPORT

Sec.

- 7-1401. Construction and operation of airport authorized.
- 7-1402. Selection of site.
- 7-1403. Acquisition and construction of facilities.
- 7-1404. Maintenance and operation.
- 7-1405. Lease of space or property.
- 7-1406. Contracts for supplies and services.
- 7-1407. Transfers of property by federal agencies.
- 7-1408. Authority to make arrests—Park Police patrol.
- 7-1409. Agreements for municipal services.
- 7-1410. Penalty for violations.
- 7-1411. Definitions.
- 7-1412. Appropriations authorized.

#### § 7-1401. Construction and operation of airport authorized.

Administrator of the Federal Aviation Agency (hereinafter referred to as the "Administrator") is hereby authorized and directed to construct, protect, operate, improve, and maintain within or in the vicinity of the District of Columbia, a public airport (including all buildings and other structures necessary or desirable therefor). (Sept. 7, 1950, 64 Stat. 770, ch. 905, § 1; Aug. 23, 1958, 72 Stat. 807, Pub. L. 85-726, § 1402(g).)

#### AMENDMENT

1958—Act Aug. 23, 1958, amended the section by striking the words "Secretary of Commerce" and inserting in lieu the words "Administrator of the Federal Aviation Agency" and by striking the word "Secretary" and inserting in lieu the word "Administrator".

#### § 7-1402. Selection of site.

For the purpose of carrying out this chapter, the Administrator is authorized to acquire, by purchase, lease, condemnation, or otherwise (including transfer with or without compensation from Federal agencies or the District of Columbia, or any State or political subdivision thereof), such lands and interests in lands and appurtenances thereto, including avigation easements or air-space rights, as may be necessary or desirable for the construction, maintenance, improvement, operation and protection of

the airport: *Provided*, That before making commitments for the acquisition of land, or the transfer of any lands, the Administrator shall consult and advise with the National Capital Park and Planning Commission as to the conformity of the proposed location with the Commission's comprehensive plan for the National Capital and its environs, and said Commission shall, upon request, submit a report and recommendations thereon within thirty days: *Provided further*, That the choice of site by the Administrator shall be made only after consultation with the governing body in the county in which the airport is to be located, with respect to the suitability of the site to be selected, and its possible impact on the vicinity. (Sept. 7, 1950, 64 Stat. 771, ch. 905, § 2; Aug. 23, 1958, 72 Stat. 807, Pub. L. 85-726, § 1402(g).)

#### AMENDMENT

1958—Act Aug. 23, 1958, amended section by striking the word "Secretary" wherever same appeared and inserting in lieu the word "Administrator".

#### TRANSFER OF FUNCTIONS

"National Capital Planning Commission" was substituted for "National Capital Park and Planning Commission" in view of act June 6, 1924, ch. 270, § 9, as added July 19, 1952, 66 Stat. 790, ch. 949, § 1, which transferred the functions, powers, and duties of the National Capital Park and Planning Commission to the National Capital Planning Commission. See section 1-1009.

#### § 7-1403. Acquisition and construction of facilities.

For the purposes of this chapter, the Administrator is empowered to acquire, by purchase, lease, condemnation, or otherwise (including transfer with or without compensation from Federal agencies or the District of Columbia, or any State or political subdivision thereof), rights-of-way or easements for roads, trails, pipe lines, power lines, railroad spurs, and other similar facilities necessary or desirable for the construction or proper operation of the airport.

The Administrator is authorized to construct any streets, highways, or roadways (including bridges) as may be necessary to provide access to the airport from existing streets, highways, or roadways. Upon completion of construction of any street, highway, or roadway within the District of Columbia, such street, highway, or roadway shall be transferred to the District of Columbia without charge and thereafter shall be maintained by the District of Columbia. Upon construction of any street, highway, or roadway within a State or political subdivision thereof, such street, highway, or roadway may be transferred to such State or political subdivision thereof, without charge, on the condition that such street, highway, or roadway thereafter be maintained as a public street, highway, or roadway by such State or political subdivision thereof. (Sept.



7, 1950, 64 Stat. 771, ch. 905, § 3; Aug. 23, 1958, 72 Stat. 807, Pub. L. 85-726, § 1402(g).)

#### AMENDMENT

1958—Act Aug. 23, 1958, struck out the word "Secretary" wherever same appeared in the section and substituted the word "Administrator" in lieu thereof.

#### NOTES TO DECISIONS

##### 1. Standing to sue

Where none of plaintiff's land was sought to be condemned, his suit to enjoin taking of property, more than one-half mile distant from his own land, for use as airport, did not present a "justiciable controversy", and his suit was premature. *Jasper v. Sawyer et al.* (1953, 92 U.S. App. D.C. 94, 205 F. 2d 700).

#### § 7-1404. Maintenance and operation.

The Administrator shall have control over and responsibility for the care, operation, maintenance, improvements, and protection of the airport, together with the power to make and amend such rules and regulations as he may deem necessary to the proper exercise thereof: *Provided*, That the authority herein contained may be delegated by the Administrator to such official or officials of the Federal Aviation Agency as the Administrator may designate. (Sept. 7, 1950, 64 Stat. 771, ch. 905, § 4; Aug. 23, 1958, 72 Stat. 807, Pub. L. 85-726, § 1402(g).)

#### AMENDMENT

1958—Act Aug. 23, 1958, struck out the word "Secretary" wherever same appeared and substituted the word "Administrator," also struck out the words "Department of Commerce" and inserted in lieu the words "Federal Aviation Agency".

#### § 7-1405. Lease of space or property.

The Administrator is empowered to lease under such conditions as he may deem proper and for such periods as may be desirable space or property within or upon the airport for purposes essential or appropriate to the operation of the airport: *Provided*, That no lease for the use of any hangar or space therein shall extend for a period exceeding three years. (Sept. 7, 1950, 64 Stat. 771, ch. 905, § 5; Aug. 23, 1958, 72 Stat. 807, Pub. L. 85-726, § 1402(g).)

#### AMENDMENT

1958—Act Aug. 23, 1958, substituted the word "Administrator" for "Secretary".

#### § 7-1406. Contracts for supplies and services.

The Administrator is authorized to contract with any person for the furnishing of supplies or performance of services at or upon the airport necessary or desirable for the proper operation of the airport, including but not limited to, contracts for furnishing food and lodging, sale of aviation fuels, furnishing of aircraft repairs and other aeronautical services, and such other services and supplies as may be necessary or desirable for the traveling public. No such contract, not including contracts involving the construction of permanent buildings or facilities, shall extend for a period of longer than five years, except the restaurant. The provisions of section 5 of title 41, U.S. Code, shall not apply to contracts authorized under this section, to leases authorized under section 7-1405 hereof, or to contracts for architectural or engineering services necessary for the design and planning of the airport. (Sept. 7,

1950, 64 Stat. 771, ch. 905, § 6; Aug. 23, 1958, 72 Stat. 807, Pub. L. 85-726, § 1402(g).)

#### AMENDMENT

1958—Act Aug. 23, 1958, substituted the word "Administrator" for "Secretary".

#### § 7-1407. Transfers of property by federal agencies.

Any executive department, independent establishment, or agency of the Federal Government or the District of Columbia, for the purposes of carrying out this chapter, is authorized to transfer to the Administrator, without compensation, upon his request, any lands, interests in lands (including aviation easements or air-space rights), buildings, property, or equipment under its control and in excess of its own requirements, which the Administrator may consider necessary or desirable for the construction, care, operation, maintenance, improvement, or protection of the airport. (Sept. 7, 1950, 64 Stat. 772, ch. 905, § 7; Aug. 23, 1958, 72 Stat. 807, Pub. L. 85-726, § 1402(g).)

#### AMENDMENT

1958—Act Aug. 23, 1958, substituted the word "Administrator" for "Secretary" wherever same appeared in the section.

#### § 7-1408. Authority to make arrests—Park Police patrol.

(a) The Administrator and any Federal Aviation Agency employee appointed to protect life and property on the airport, when designated by the Administrator, is hereby authorized and empowered (1) to arrest under a warrant within the limits of the airport any person accused of having committed within the boundaries of the airport any offense against the laws of the United States, or against any rule or regulation prescribed pursuant to this chapter; (2) to arrest without warrant any person committing any such offense within the limits of the airport, in his presence; or (3) to arrest without warrant within the limits of the airport any person whom he has reasonable grounds to believe has committed a felony within the limits of the airport.

(b) Any individual having the power of arrest as provided in subsection (a) of this section may carry firearms or other weapons as the Administrator may direct or by regulation may prescribe.

(c) The United States Park Police may, at the request of the Administrator, be assigned by the Secretary of the Interior, in his discretion, to patrol any area of the airport, and any members of the United States Park Police so assigned are hereby authorized and empowered to make arrests within the limits of the airport for the same offenses and in the same manner and circumstances as are provided in this section with respect to employees designated by the Administrator.

(d) The officer on duty in command of those employees designated by the Administrator as provided in subsection (a) of this section may accept deposit of collateral from any person charged with the violation of any rule or regulation prescribed under this chapter, for appearance in court or before the appropriate United States Commissioner; and such collateral shall be deposited with such United States

Commissioner. (Sept. 7, 1950, 64 Stat. 772, ch. 905, § 8; Aug. 23, 1958, 72 Stat. 807, Pub. L. 85-726, § 1402(g).)

## AMENDMENT

1958—Act Aug. 23, 1958, substituted the word "Administrator" for "Secretary" wherever same appeared in subsection (a), (b), and (d); substituted "Federal Aviation Agency" for "Department of Commerce" in subsection (a) and amended subsection (c) to read as above set out.

## NOTES TO DECISIONS

## 1. Arrest without warrant

A motorist, who had received a summons from an officer to appear before a court commissioner to answer a charge of a parking violation, could not be validly arrested without a warrant for failure to post collateral. *P. Y. Craig v. J. T. Cox & A. C. Doak* (D.C. Mun. App. 1961, 171 A. 2d 259).

Bail follows arrest, and is not given to avoid an arrest. *Id.*

## § 7-1409. Agreements for municipal services.

The Administrator may enter into agreements with the State, or any political subdivision thereof, in which the airport or any portion thereof is situated, for such State or municipal services as the Administrator shall deem necessary to the proper and efficient operation and protection of the airport, and he may, from time to time, agree to modifications in any such agreement: *Provided, however*, That were the charge for any such service is established by the laws of the State, the Administrator may not pay for such service in excess of the charge so established. (Sept. 7, 1950, 64 Stat. 772, ch. 905, § 9; Aug. 23, 1958, 72 Stat. 807, Pub. L. 85-726, § 1402(g).)

## AMENDMENT

1958—Act Aug. 23, 1958, substituted the word "Administrator" for "Secretary" wherever same appeared in the section.

## § 7-1410. Penalty for violations.

Any person who knowingly and willfully violates any rule, regulation, or order issued by the Administrator under this chapter shall be deemed guilty of a misdemeanor and upon conviction thereof shall be subject to a fine of not more than \$500 or to imprisonment not exceeding six months, or to both such fine and imprisonment. (Sept. 7, 1950, 64 Stat. 772, ch. 905, § 10; Aug. 23, 1958, 72 Stat. 807, Pub. L. 85-726, § 1402(g).)

## AMENDMENT

1958—Act Aug. 23, 1958, substituted the word "Administrator" for "Secretary".

## § 7-1411. Definitions.

Unless the context otherwise requires, the definitions of the words and phrases used in this chapter shall be the definitions assigned to such words and phrases by the Civil Aeronautics Act of 1938, as amended. (Sept. 7, 1950, 64 Stat. 772, ch. 905, § 11.)

## REFERENCES IN TEXT

Civil Aeronautics Act of 1938, as amended, referred to in the text, which was classified to U.S. Code, Title 49, § 401 et seq., was repealed and is now covered by U.S. Code, Title 49, § 1301 et seq.

## § 7-1412. Appropriations authorized.

There is hereby authorized to be appropriated such sum as may be necessary for the construction of the airport authorized by this chapter, and such sum shall remain available until expended. There are hereby authorized to be appropriated such other sums as may be necessary to carry out the purposes of this chapter. (Sept. 7, 1950, 64 Stat. 773, ch. 905, § 12; as amended July 11, 1958, 72 Stat. 354, Pub. L. 85-511, § 1.)

## AMENDMENT

1958—Act July 11, 1958, removed the limitation on the amount authorized to be appropriated for construction.





## **TITLE 9.—PUBLIC BUILDINGS AND GROUNDS**

### **Chapter 5.—REPAIRS AND IMPROVEMENTS**

#### **§ 9-501. Repairs and improvements—Working fund.**

CONTINUATION OF ACT APR. 8, 1960

Section 15 of act Sept. 21, 1961, 75 Stat. 564, Pub. L. 87-265, provided that: “—limitations and legislative provisions contained in the District of Columbia Appropriations Act, 1961, shall be continued for the fiscal year 1962:—”



## PART II

### CIVIL PROCEDURE

#### TITLE 11.—JUDICIARY AND JURISDICTION

##### Chapter 3.—UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

###### § 11-326. Enforcement of decrees.

###### NOTES TO DECISIONS

###### 4. Contempt

Statute precluding imprisonment for mere failure to pay money had no application to contempt proceeding. *In re E. L. Ferrell and N. A. Perry* (D.C. Mun. App. 1961, 172 A. 2d 555).

##### Chapter 7.—MUNICIPAL COURT AND MUNICIPAL COURT OF APPEALS

##### SUBCHAPTER I.—THE MUNICIPAL COURT FOR THE DISTRICT OF COLUMBIA

###### § 11-749. Deposits for jury trials—When earned.

###### CONTINUATION OF ACT APR. 8, 1960

Section continued by provisions of section 15 of act Sept. 21, 1961, 75 Stat. 564, Pub. L. 87-265. See note to section 9-501.

###### § 11-755. Jurisdiction—Criminal and civil branch— Exclusive in certain actions—Service of process— Judgments—Duration—Docketing—Fees.

(a) \* \* \*

\* \* \* \* \*

The court and each judge thereof shall have and exercise the same powers and jurisdiction as were heretofore had or exercised by the police court of the District of Columbia or by the municipal court of the District of Columbia or the judges thereof on the effective date of this Act and in addition the said court shall have exclusive jurisdiction of civil actions in which the claimed value of personal property or the debt or damages claimed, exclusive of interest, attorneys' fees, protest fees, and costs, does not exceed the sum of \$3,000 and, in addition, shall also have exclusive jurisdiction of such actions against executors, administrators, and other fiduciaries as well as of all crossclaims and counterclaims interposed in all actions over which it has jurisdiction, regardless of the amount involved: *Provided, however*, That the District Court of the United States for the District of Columbia shall have jurisdiction of counterclaims and crossclaims interposed in actions over which it has jurisdiction.

\* \* \* \* \*

(Sept. 14, 1961, 75 Stat. 513, Pub. L. 87-242, § 1.)

###### REFERENCES IN TEXT

"Effective date of this Act", referred to in the text, means the effective date of act Apr. 1, 1942. See note under this section.

###### AMENDMENT

1961—Act Sept. 14, 1961, amended the second sentence of subsection (a) to read as above set out. The amendment enlarges the jurisdiction of the court over cross-claims and counterclaims in all actions over which it has jurisdiction, regardless of the amount involved.

###### APPLICABILITY OF 1961 AMENDMENT

Section 2 of act Sept. 14, 1961, provided as follows: "The amendment made by the first section of this Act [subsection (a)] shall apply only with respect to actions instituted on and after the date of enactment of this Act."

###### EFFECTIVE DATE OF 1961 AMENDMENT

Section 3 of act Sept. 14, 1961, provided as follows: "This Act shall take effect thirty days after enactment."

###### CHANGE OF NAME

Act June 25, 1948, 62 Stat. 991, ch. 646, § 32(b), eff. Sept. 1, 1948, as amended by act May 24, 1949, 63 Stat. 107, ch. 139, § 127, substituted "United States District Court for the District of Columbia" for "District Court of the United States for the District of Columbia."

###### EFFECTIVE DATE

Section effective three months after Apr. 1, 1942, see section 14 of act Apr. 1, 1942, set out as a note under section 11-751, in the main volume.

###### CROSS REFERENCE

Libel actions involving seized gambling property, see § 22-1505.

###### § 11-756. Transfer of actions from United States District Court for the District of Columbia—Amount of judgment—Power to prescribe rules and procedure—Attendance of witnesses.

###### NOTES TO DECISIONS

###### 8. Contempt

Trial court did not abuse discretion in imposing fine on attorney, despite his apology, for absenting himself from matter assigned and ready for trial. *In re J. G. Saul* (D.C. Mun. App. 1961, 171 A. 2d 751).

##### SUBCHAPTER II.—DOMESTIC RELATIONS BRANCH, MUNICIPAL COURT FOR THE DIS- TRICT OF COLUMBIA

###### § 11-762. Jurisdiction.

###### NOTES TO DECISIONS

###### 8. Jurisdiction

Statute creating Domestic Relations Branch and providing that the United States District Court for the District of Columbia would not be deprived of jurisdiction to enforce judgments and orders in pending actions requires that new cases are to go before new court, and cases filed with the United States District Court before cutoff date were to remain and be decided there. *M. R. Hatten v. L. D. Hatton* (D.C. Mun. App. 1961, 171 A. 2d 256).

Wife who had been awarded divorce decree in United States District Court for District of Columbia, before enactment of statute creating Domestic Relations Branch, could not bring subsequent action against hus-



band in the Domestic Relations Branch for separate maintenance and support of children. *Id.*

Exclusive jurisdiction of suit against divorced husband to enforce support for wife and minor son was in Domestic Relations Branch of Municipal Court, rather than District Court. *S. S. Wagner v. C. A. Wagner* (1961, 293 F. 2d 533, 110 U.S. App. D.C. 345).

For purposes of jurisdiction in suits to enforce support, divorced wife is deemed to be a wife. *Id.*

District Court should not have dismissed complaint to enforce support for divorced wife and minor son, but should have transferred the case to the Municipal Court for trial. *Id.*

At least in transition period following transfer of jurisdiction from one court to another, a court should not dismiss suit which can properly be transferred. *Id.*

The Domestic Relations Branch of the Municipal Court for the District of Columbia, rather than the Civil Division, had jurisdiction of action by wife for support arrearages for herself and son under written separation agreement. *J. Gaissert v. C. Gaissert* (D.C. Mun. App. 1961, 174 A. 2d 195).

Domestic Relations Branch of Municipal Court of District of Columbia had exclusive jurisdiction and equitable power to adjudicate divorced wife's claim for enforcement of separation agreement provision relating to benefits for children, as support or claims against husband's property, even though action was instituted before enactment of statute clarifying jurisdiction. *V. S. David v. L. S. Blumenthal* (1961, 292 F. 2d 765, 110 U.S. App. D.C. 272).

### SUBCHAPTER III.—THE MUNICIPAL COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA.

§ 11-772. Right to appeal—Appeal from decisions of various boards and commissions—Final order or judgment—Interlocutory orders—Appeals to United States Court of Appeals for the District of Columbia—Procedure—Printing of record or briefs on appeal—Scope of review—Retroactive effect.

#### NOTES TO DECISIONS

Abuse of discretion 2  
Allowance of appeal 4  
Evidence 22  
Persons entitled to appeal 43

#### 2. Abuse of discretion

Penalty of suspension or revocation of license, to be imposed upon a broker guilty of conduct in violation of statute, was a matter wholly within discretionary power of real estate commission. *P. R. Kelley v. Real Estate Commission of the District of Columbia* (D.C. Mun. App. 1961, 172 A. 2d 415).

#### 4. Allowance of appeal

Municipal Court of Appeals' denial of allowance of appeal constituted affirmance of judgment of conviction, and trial court could not thereafter vacate and set aside judgment. *District of Columbia v. Bosley* (D.C. Mun. App. 1961, 173 A. 2d 218).

Municipal Court of Appeals takes jurisdiction in order to determine whether appeal will be allowed when application for allowance of appeal is filed. *Id.*

#### 22. Evidence

Evidence sustained finding of real estate commission, which revoked broker's real estate license, that broker in violation of statute made a substantial misrepresentation, and engaged in conduct which constituted fraudulent and dishonest dealing. *P. R. Kelley v. Real Estate Commission of the District of Columbia* (D.C. Mun. App. 1961, 172 A. 2d 415).

Appellant had burden of proving that judgment was plainly wrong or without evidence to support it. *G. W. Knight et ano. v. E. Sarbov etc., et al.* (D.C. Mun. App. 1961, 174 A. 2d 194).

#### 43. Persons entitled to appeal

Government could appeal, as of right, from order, entered without authority, vacating judgment of conviction. *District of Columbia v. M. F. Bosley* (D.C. Mun. App. 1961, 173 A. 2d 218).

### Chapter 8.—SMALL CLAIMS AND CONCILIATION BRANCH OF MUNICIPAL COURT

§ 11-804. Jurisdiction—Limited—Exclusive in certain actions—Authority of judges—Compensation.

#### AMENDMENT

1961—Act September 6, 1961, Pub. L. 87-203, struck out "\$50" in subsection (a) and inserted in lieu thereof "\$150", thus increasing the jurisdiction of the court to \$150.

### Chapter 9.—JUVENILE COURT

§ 11-953. Complaint.

#### NOTES TO DECISIONS

#### 3. Examination under oath

Statute requiring complainant to be examined under oath by assistant corporation counsel to determine validity of accusation that defendant is father of illegitimate children was sufficiently complied with where assistant corporation counsel personally examined complainant, although exact details of interview were lacking because of lapse of six years between filing of informations and trial, and counsel administered oath at end of interview rather than beginning. *District of Columbia v. R. L. Dade* (D.C. Mun. App. 1961, 173 A. 2d 545).

### Chapter 15.—FEES AND COSTS

§ 11-1507. Costs in clerk's office and register of wills payable immediately—Exception—United States and District of Columbia.

All costs and fees for services rendered by the clerk and the register of wills and chargeable to others than the United States or the District of Columbia shall be payable in advance and shall be collected by such rules and regulations, not incompatible with law, as may be prescribed by the court, but shall in no case be paid by the United States or by the District of Columbia. The District of Columbia shall not be required to pay fees to the clerk of the United States Court of Appeals for the District, or to the marshal of the District, and shall be entitled to the services of said marshal in the service of all civil process.

*Provided*, That neither the United States nor the District of Columbia, nor any officer of either, acting in his official capacity, shall be required to give bond or enter into undertaking to perfect any appeal or to obtain any injunction or other writ, process, or order in or of any court in the District of Columbia for which a bond or undertaking was, on June 9, 1910, or may thereafter be required by law or rule of court. (Mar. 3, 1901, 31 Stat. 1219, ch. 854, § 177; June 30, 1902, 32 Stat. 527, ch. 1329; June 9, 1910, 36 Stat. 464, ch. 277; June 7, 1934, 48 Stat. 926, ch. 426; Oct. 4, 1961, 75 Stat. 769, Pub. L. 87-349, § 1.)

#### AMENDMENTS

1961—Act Oct. 4, 1961, amended the first sentence of the section by inserting "or the District of Columbia" after "than the United States" and by inserting "or by the District of Columbia" before the period.

1910—Act June 9, 1910, added the proviso.

1902—Act June 30, 1902, struck out the words "immediately after the services are performed" and inserted in lieu thereof the words "in advance."

#### CHANGE OF NAME

Act June 7, 1934, substituted "United States Court of Appeals for the District" for "court of appeals of the District."

#### CROSS REFERENCE

Liability for costs in suits against Board of Education, see § 31-101.

§ 11-1519. Neither District of Columbia nor officer thereof required to pay costs.

Neither the District of Columbia nor any officer thereof acting therefor shall be required to pay court costs or fees in any court in and for the District of Columbia. (June 28, 1944, 58 Stat. 533, ch. 300, § 16; Oct. 4, 1961, 75 Stat. 769, Pub. L. 87-349, § 2.)

#### AMENDMENT

1961—Section 2 of act Oct. 4, 1961, amended the section by inserting "or fees" immediately following "court costs."

#### CODIFICATION

Section, prior to 1961 amendment, was from the District of Columbia Appropriation Act, 1945, act June 28, 1944. Similar provisions were contained in acts July 15, 1939, 53 Stat. 1009, ch. 281, § 1; June 12, 1940, 54 Stat. 307, ch. 333, § 1.

### Chapter 16.—UNIFORM SUPPORT

§ 11-1603. Remedies additional to those now existing.

1. Decree, does not bar action for support

Award for separate maintenance and support for minor children obtained under Reciprocal Enforcement of Support Act did not preclude later statutory action for maintenance and support. *A. E. Figlio v. J. Figlio* (D.C. Mun. App. 1961, 173 A. 2d 904).

§ 11-1615. Order of support—Bond—Contempt.

#### NOTES TO DECISIONS

1. Abuse of discretion

On record presented, order requiring father to make monthly payments for support of child who was living in Florida in custody of father's former wife was proper, and the amount within discretionary limits. *M. Brickey v. L. Weinstein* (D.C. Mun. App. 1961, 173 A. 2d 372.)





## TITLE 12.—RIGHT TO REMEDY—CONDITIONS AFFECTING

### Chapter 1.—ABATEMENT AND REVIVOR

§ 12-101. Actions survive in favor of or against representatives of deceased party—Limitation in tort actions.

#### NOTES TO DECISIONS

##### 41. Libel

Right of action for libel does not survive death of alleged libelee. *M. L. Shearer, Adm'tx etc. v. Bakery and Confectionery Workers etc.* (1961, 294 F. 2d 235, — U.S. App. D.C. —).

### Chapter 2.—LIMITATION OF ACTIONS

§ 12-201. Periods—Recovery of real property—Executor's or administrator's bond—Instruments under seal—Simple contract—Property damage—Statutory penalty or forfeiture—Certain torts—Actions not specified—Persons under disabilities.

#### NOTES TO DECISIONS

Pension benefits 48.50  
Summary judgment 58

##### 48.50 Pension benefits

Three-year statute of limitations was not applicable to action by claimant for pension benefits from trust fund created by National Bituminous Coal Wage Agreement,

but rather, the doctrine of laches was applicable. *A. Szuch v. John L. Lewis et al.* (1960, 193 F. Supp. 831).

##### 58. Summary judgment

That creditor under an agreement for sale of goods on a 60-day credit basis demanded payment less than 60 days after some of the sales were made, though more than 60 days after others, did not establish that the meaning of the credit terms was a disputed question of fact precluding summary judgment. *Curtis Brothers, Inc. v. Thomasville Chair Co.* (1961, 289 F. 2d 461, 110 U.S. App. D.C. 84).

Where earliest sales were made on October 5, 1956, under an agreement providing for 60 days credit, no suit could have been brought before December 4, 1956 and suit brought December 2, 1959, was within the three-year statute of limitations. *Id.*

§ 12-208. Actions against District of Columbia for unliquidated damages—Notice within 6 months—Police report.

#### NOTES TO DECISIONS

##### 10. Sufficiency of notice

Notice that pedestrian fell as result of defect in sidewalk in front of named premises was adequate though defect existed in gutter rather than sidewalk. *M. M. Dixon v. District of Columbia* (D.C. Mun. App. 1961, 168 A. 2d 905).



## TITLE 13.—PROCESS, PLEADINGS, AND PARTIES

### Chapter 1.—PROCESS

#### § 13-103. Service on foreign corporations.

##### NOTES TO DECISIONS

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##### 7. Doing business

Canadian aircraft manufacturer which had main plant and offices in Canada and maintained single employee in District of Columbia, who served as liaison man with United States Government and whose principal duties were to transmit information about government's requirements and to keep in contact with government agencies and who had no authority to accept orders from any source or execute contracts, was not "doing business in the district" and service of process upon such employee in action for injuries sustained in an airplane crash allegedly caused by negligence of manufacturer was properly quashed. *R. H. Traher et al. v. DeHavilland Aircraft of Canada Ltd.* (1961, 294 F. 2d 299, — U.S. App. D.C. —).

##### 14. Service upon officer

Since automobile importer, whose wholesale distributor had its principal place of business in District of Columbia, had a continuing contact with District, it was subject to service, in suit under Automobile Dealers Franchise

Act, pursuant to District Code section providing for service on agent of foreign corporation or person conducting its business; and under that section, importer could be served by making service upon its distributor's president. *Fiat Motor Co., Inc. v. Alabama Imported Cars, Inc.* (1961, 292 F. 2d 745, 110 U.S. App. D.C. 252).

#### § 13-108. Publication as to nonresident, those absent for six months, unknown heirs or devisees, for divorce or proceeding in rem—Actual service beyond District.

##### NOTES TO DECISIONS

##### 5. Alimony

Use of service by publication or service outside of District of Columbia was authorized where divorced husband resided in Ohio, and wife, who sought support for herself and minor child, also sought to subject former marital home in District to support payments awarded and to have determined her property right in the home and to obtain injunction against the sale. *S. S. Wagner v. C. A. Wagner* (1961, 293 F. 2d 533, 110 U.S. App. D.C. 345).

Substituted service upon husband, who was residing in Ohio, of complaint wherein wife sought determination of property rights of husband's real estate in District of Columbia was sufficient to give court in District of Columbia power to enforce her rights without attachment of the property at time of filing suit. *Id.*





## TITLE 14.—PROOF

### Chapter 3.—COMPETENCY OF WITNESSES

Sec.

14-310. Clergy—Examination of, as to confidential communications, not permitted—Exception.

§ 14-302. Testimony with respect to transactions, declarations or admissions of deceased or incapable persons.

#### NOTES TO DECISIONS

##### 5. Corporate transactions

Evidence by automobile buyer regarding cash payment made to deceased taxpayer was admissible in action respecting redetermination of income tax liability of deceased. *Logan Square Auto Mart, Inc., et al. v. Commissioner of Internal Revenue* (1961, 291 F. 2d 136, U.S. App. 7th Ct.).

§ 14-308. Testimony of physicians—Privilege—Exceptions.

#### NOTES TO DECISIONS

##### 19. Waiver

Any physician-patient privilege which existed between defendant and psychiatrist was waived by psychiatrist's testimony relating to defendant's mental faculty to formulate and harbor larcenous intent, and government had thereupon right to cross-examine psychiatrist to explore underlying basis for his opinion, and, in so doing, could properly ask whether defendant had informed psychiatrist defendant was under arrest on charge of falsifying statements. *A. A. Dani v. United States* (D.C. Mun. App. 1961, 173 A. 2d 736).

§ 14-310. Clergy—Examination of, as to confidential communications, not permitted—Exception.

No priest, clergyman, rabbi, or other duly licensed, ordained, or consecrated minister of any religion authorized to perform a marriage ceremony in the District of Columbia or duly accredited practitioner of Christian Science shall be examined in any civil or criminal proceedings in the courts of the District of Columbia—

(1) with respect to any confession, or communication, made to him, in his professional capacity in the course of discipline enjoined by the church or other religious body to which he belongs, without the consent of the person making such confession or communication, or

(2) with respect to any communication made to him, in his professional capacity in the course of giving religious or spiritual advice, without the consent of the person seeking such advice, or

(3) with respect to any communication made to him, in his professional capacity, by either spouse, in connection with any effort to reconcile estranged spouses, without the consent of the spouse making the communication.

(Sept. 26, 1961, 75 Stat. 681, Pub. L. 87-318, § 1.)





## TITLE 15.—JUDGMENTS AND EXECUTION OF JUDICIAL POWERS

### Chapter 3.—PROCEEDINGS IN AID OF EXECUTION

#### § 15-309. Traversing garnishee's answers—Costs and counsel fee.

##### NOTES TO DECISIONS

##### 2. Counsel fees

Evidence supported finding that garnishee in whose favor judgment had been entered after trial on traverse to his answer had incurred obligation to pay for legal

services furnished. *A. A. Peikin v. C. Williams* (D.C. Mun. App. 1961, 167 A. 2d 355).

Good faith in issuance of garnishment and traversing of garnishee's answer could be taken into consideration in fixing reasonable counsel fee recoverable by successful garnishee but was not absolute bar to grant of counsel fee. *Id.*

Award to garnishee, in whose favor judgment had been entered after trial on traverse to his answer, of attorney's fee in amount of \$300 was not unreasonable although the attachment was for only \$600. *Id.*



## TITLE 16.—SPECIAL REMEDIES AND PROCEEDINGS

### Chapter 4.—DIVORCE AND SEPARATION

§ 16-403. Causes for divorce a vinculo and for divorce a mensa et thoro and for annulling marriages.

#### NOTES TO DECISIONS

Common-law marriage 8  
Drunkness 17  
Laches and estoppel 25  
Separation agreement 43  
Waiver 51

#### 8. Common-law marriage

Evidence that the parties never expressly agreed to be husband and wife, and that the defendant made a promise to marry the plaintiff which he never kept, was insufficient to establish a common-law marriage. *M. M. Toye v. Leo A. Toye* (D.C. Mun. App. 1961, 170 A. 2d 778).

#### 17. Drunkness

Cruelty resulting from excessive drinking, which will justify a spouse in leaving the other and thereby make the other guilty of constructive desertion, will justify a limited divorce. *R. W. Potts v. J. H. Potts* (D.C. Mun. App. 1961, 171 A. 2d 263).

#### 25. Laches and estoppel

Wife's delay of 21 years after separation before her first demand for support did not constitute laches barring her from permanent alimony in husband's divorce action on ground of five years' voluntary separation, in absence of showing of prejudice to husband, where wife had wished to be independent but her health deteriorated, and particularly where, during 12 of those years, she was mentally incompetent. *J. N. Samuels, Jr. v. D. C. Samuels* (D.C. Mun. App. 1961, 173 A. 2d 214).

#### 43. Separation agreement

Evidence sustained finding that husband had, by his acts as well as by execution of separation agreement with his wife, confirmed and consented to separation already existing between parties, and did not carry his burden, showing desertion. *G. N. Keller v. D. W. Keller* (D.C. Mun. App. 1961, 171 A. 2d 511).

#### 51. Waiver

Separation agreement which required parties, in event of decree of divorce or of separation, to request no sum for maintenance, alimony, property settlement, costs or attorney fees except as provided therein, did not constitute waiver of attorney's fees to wife's counsel in husband's unsuccessful divorce action. *G. N. Keller v. D. W. Keller* (D.C. Mun. App. 1961, 171 A. 2d 511).

§ 16-410. Alimony pendente lite—Suit money—Counsel fees—Enforcement—Enjoining disposition and sequestration of property—Custody of children.

#### NOTES TO DECISIONS

#### 1.50 Abatement

Divorce action abated upon wife's death, and, therefore, court lacked power to compel surviving husband to pay wife's counsel fees for services prior to wife's death. *B. F. Fitzgerald, Jr., et ano. v. M. Williams* (D.C. Mun. App. 1961, 170 A. 2d 777).

§ 16-415. Maintenance of wife and minor children—Enforcement.

#### NOTES TO DECISIONS

#### 10.50 Effect of decree under reciprocal laws

Award for separate maintenance and support for minor children obtained under reciprocal enforcement of Support Act did not preclude later statutory action for maintenance and support. *A. E. Figliozi v. J. Figliozi* (D.C. Mun. App. 1961, 173 A. 2d 904).

§ 16-418. Court to assign attorney in uncontested cases—Compensation.

#### NOTES TO DECISIONS

#### 1. Contempt

Municipal court had summary jurisdiction over attorneys who had represented plaintiff in unsuccessful divorce action in which court ordered payment of attorney fees to counsel appointed for defendant, and such summary power could be invoked to punish such attorneys for contempt when they failed to pay over to defendant's counsel a sum which the court had found had been entrusted to them for payment of such fees. *In re E. L. Ferrell and N. A. Perry* (D.C. Mun. App. 1961, 172 A. 2d 555).

Failure of attorneys to comply with order requiring them to pay over funds found to have been entrusted to them by their client for payment of attorney fees awarded opponent constituted "contempt of court". *Id.*

Trial court had authority to award counsel fees for attorney appointed by court to represent husband in wife's uncontested divorce action dismissed for lack of jurisdiction and lack of proof. *Id.*

### Chapter 6.—EMINENT DOMAIN

#### ACQUISITION OF LAND IN THE DISTRICT OF COLUMBIA FOR USE OF THE UNITED STATES

§ 16-619. Condemnation of land for United States—Proceeding by Attorney General in United States District Court for the District of Columbia.

#### NOTES TO DECISIONS

Discretionary authority 2.50  
Tort actions 7

#### 2.50 Discretionary authority

Statute authorizing District of Columbia Redevelopment Land Agency to acquire property in the name of the United States by condemnation under judicial process whenever in the opinion of the Authority it was necessary or advantageous to do so, was a grant of discretionary authority as to time of taking. *C. R. Goddard v. District of Columbia Redevelopment Land Agency etc.* (1961, 287 F. 2d 343, 109 U.S. App. D.C. 304).

#### 7. Tort actions

The District of Columbia Redevelopment Land Agency is a Federal agency within the meaning of the Federal Tort Claims Act, and suits based on torts allegedly committed by the Agency or its employees acting in an official capacity are maintainable, if at all, under the Tort Claims Act, and must name the United States as defendant. *C. R. Godard v. District of Columbia Redevelopment Land Agency etc.* (1961, 287 F. 2d 343, 109 U.S. App. D.C. 304).

§ 16-644. Proceedings on behalf of the District of Columbia, not affected by sections 16-619 to 16-644.

#### NOTES TO DECISIONS

#### 1. Tort actions

The District of Columbia Redevelopment Land Agency is a Federal agency within meaning of the Federal Tort Claims Act, and suits based on torts allegedly committed by the Agency or its employees acting in an official capacity are maintainable, if at all, under the Tort Claims Act, and must name the United States as defendant. *C. R. Goddard v. District of Columbia Redevelopment Land Agency etc.* (1961, 287 F. 2d 343, 109 U.S. App. D.C. 304).



## Chapter 12.—NEGLIGENCE CAUSING DEATH

## § 16-1201. Liability.

## NOTES TO DECISIONS

## 9. Construction with other laws

Federal court, for New York District, whose jurisdiction rested upon diversity of citizenship, would apply New York conflict of laws rules to death action arising out of airplane crash occurring over District of Columbia; and, accordingly, plaintiff's right to recover damages was governed by Wrongful Death Act of District of Columbia. *J. A. St. Clair as Executrix etc. v. Eastern Airlines, Inc.* (1961, 194 F. Supp. 623).

New York statute requiring that judgment include interest from date of decedent's death was inapplicable to wrongful death action in which substantive right of recovery was based upon laws of District of Columbia. *Id.*

## § 16-1202. Party plaintiff—Statute of limitations.

## NOTES TO DECISIONS

## 6. Construction with other laws

Federal court, for New York District, whose jurisdiction rested upon diversity of citizenship, would apply New York conflict of laws rules to death action arising out of airplane crash occurring over District of Columbia; and, accordingly, plaintiff's right to recover damages was governed by Wrongful Death Act of District of Columbia. *J. A. St. Clair as Executrix etc. v. Eastern Airlines, Inc.* (1961, 194 F. Supp. 623).

New York statute requiring that judgment include interest from date of decedent's death was inapplicable to wrongful death action in which substantive right of recovery was based upon laws of District of Columbia. *Id.*

## PART III

# PROBATE LAW AND PROCEDURE

## TITLE 18.—DECEDENTS' ESTATES AND THEIR DISTRIBUTION

### Chapter 1.—LAW OF DESCENTS

#### § 18-101. Course of descents generally.

On the death of any person seized of or entitled to an interest in an estate in lands, tenements, or hereditaments in the District of Columbia, and intestate thereof, the same shall descend in fee simple to such person's surviving spouse, if any, and kindred, who according to the laws of the District of Columbia now or hereafter in force relating to the distribution of the personal property of intestates, would be entitled to the surplus personal property of such intestate, if he or she had died a resident of the District of Columbia and possessed of such surplus personalty; and such surviving spouse and kindred shall take as tenants in common in the same proportions as are or shall be fixed by such laws relating to personal property. Subject to the right of dower, such real property shall be liable, in the event of insufficiency of the personal property, for the payment of the intestate's funeral expenses, debts, costs of administration, and estate, inheritance, and succession taxes in the same manner and to the same extent as the personal property of such intestate. Should said lands, tenements, or hereditaments be sold under a decree of a court having jurisdiction over the same, then it shall be unnecessary to secure the consent of said widow or surviving husband to said sale, unless the widow elects to take her dower, if any, in all real estate whereof the husband, prior to November 29, 1957, was seized at any time during the marriage or the surviving spouse elects to take the right of dower provided by section 18-201a as amended. (Aug. 31, 1957, 71 Stat. 560, Pub. L. 85-244, § 1; Sept. 14, 1961, 75 Stat. 515, Pub. L. 87-246, § 2).

#### AMENDMENT

1961—Act Sept. 14, 1961, amended section generally. For provisions of section prior to this amendment, see section as set out in main volume of the Code.

#### EFFECTIVE DATE OF 1961 AMENDMENT

Section 8 of act Sept. 14, 1961, provided that: "The foregoing provisions of this Act [amending sections 18-101, 18-201a, 18-204, 18-211 and 30-201] shall become effective six months after the date of enactment of this Act."

#### POPULAR NAME

Section 1 of act Sept. 14, 1961, provided: "That this Act (amending sections 18-101, 18-201a, 18-211, 18-204 and 30-201) may be cited as the "Marital Property Rights Amendments of 1961."

#### REPEAL OF INCONSISTENT PROVISIONS

Section 7 of act Sept. 14, 1961, provided that: "Any provision of law inconsistent with the provisions and

amendments of this Act [amending sections 18-101, 18-201a, 18-204, 18-211, and 30-201] is hereby repealed."

#### CROSS REFERENCES

Dower rights of husband and wife, see § 18-201a.  
Distribution of death benefits of fraternal benefit association, see § 35-901.  
Distribution of personal property, see §§ 18-701 to 18-723.  
Distribution of proceeds of action for wrongful death, see § 16-1203.  
Inheritance by adopted children, see § 16-222.  
Renunciations, see § 18-211.

### Chapter 2.—DOWER RIGHTS

#### Sec.

- 18-201a. Dower rights of husband and wife—Joint tenancies—All laws relating to the right of dower to be construed as applicable to both husband and wife.  
18-204. Absent or incompetent spouse.  
18-211. Renunciation of devises and bequests to spouse—Election of dower—Time limitations—Renunciations or elections by guardian or fiduciaries—Renunciation deemed to have been made when nothing passes under bequest or devise—Maximum rights upon renunciation—Antenuptial or postnuptial agreements.

§ 18-201a. Dower rights of husband and wife—Joint tenancies—All laws relating to the right of dower to be construed as applicable to both husband and wife.

Every husband and wife shall acquire by virtue of the marriage a right of dower which shall be an inchoate estate for life in one-third of the real property owned by the other spouse at any time during the marriage, whether by legal or equitable title, and whether held by either spouse at the time of his or her death or not, and such estate, which shall have the same incidents as the common law estate of dower in force and effect in the District of Columbia immediately prior to November 29, 1957, shall be in lieu of any inchoate rights acquired by or which may have attached to the real estate of any husband or wife by virtue of the provisions of subsection (b) of this section, as such subsection was in effect immediately prior to the effective date of this amendment, and shall not operate to the prejudice of any claim for the purchase money of such lands. No such right of dower shall attach to any lands held by any two or more persons as joint tenants while such tenancy exists; and all provisions of the Act entitled 'An Act to establish a code of law for the District of Columbia', approved March 3, 1901, as amended, and all other laws in force in



the District of Columbia relating to the right of dower and its incidents shall, on and after the effective date of this amendment, be construed to be applicable to both husband and wife. (Aug. 31, 1957, 71 Stat. 560, Pub. L. 85-244, § 3; Sept. 14, 1961, 75 Stat. 515, Pub. L. 87-246, § 3.)

#### REFERENCES IN TEXT

Subsection (b) referred to in text will be found in section 18-201a of the main volume.

Act of Mar. 3, 1901, referred to in text, relating to dower rights will be found generally set out in this title. For other provisions set out in different parts of the Code see distribution tables relating to act of Mar. 3, 1901, 31 Stat. 1189, in the main volume.

#### AMENDMENT

1961—Act Sept. 14, 1961, amended the section to read as above set out. The amendment restores the inchoate right of dower and makes the same applicable to both husband and wife. For provisions of section prior to this amendment see section as set out in main volume of Code.

#### EFFECTIVE DATE OF 1961 AMENDMENT

Section 8 of act Sept. 14, 1961, provided that: "The foregoing provisions of this Act [amending sections 18-101, 18-201a, 18-204, 18-211 and 30-201] shall become effective six months after the date of enactment of this Act."

#### POPULAR NAME

Section 1 of act Sept. 14, 1961, provided: "That this Act (amending sections 18-101, 18-201a, 18-204, 18-211 and 30-201) may be cited as the 'Marital Property Rights Amendments of 1961.'"

#### CROSS REFERENCE

Renunciations, see § 18-211.

### § 18-204. Absent or incompetent spouse.

Where any married person is a lunatic or insane, and has been so adjudicated by a court of competent jurisdiction and such adjudication remains in force, or where any married person has been absent or unheard of for seven years, the husband or wife, as the case may be, of such lunatic or insane or absent person may grant and convey by his or her separate deed, whether the same be absolute or by way of lease or mortgage, as fully as if he or she were unmarried, any real estate which he or she may have acquired since such adjudication or since the beginning of such absence. (Sept. 14, 1961, 75 Stat. 517, Pub. L. 87-246, § 5.)

#### AMENDMENT

1961—Act Sept. 14, 1961, amended section to read as above set out. The amendment makes the section applicable to both husband and wife.

#### EFFECTIVE DATE OF 1961 AMENDMENT

Section 8 of act Sept. 14, 1961, provided that: "The foregoing provisions of this Act [amending sections 18-101, 18-201a, 18-204, 18-211 and 30-201] shall become effective six months after the date of enactment of this Act."

#### POPULAR NAME

Section 1 of act Sept. 14, 1961, provided: "That this Act (amending sections 18-101, 18-201a, 18-211, 18-204 and 30-201) may be cited as the "Marital Property Rights Amendments of 1961."

#### CROSS REFERENCES

Right of dower of husband and wife, see § 18-201a.

Renunciations, see § 18-211.

Renunciation of dower rights, see § 30-216.

Release of dower generally, see § 30-216.

Release of dower of insane person, see § 21-301.

§ 18-211. Renunciation of devises and bequests to spouse—Election of dower—Time limitations—Renunciations or elections by guardians or fiduciaries—Renunciations deemed to have been made when nothing passes under bequest or devise—Maximum rights upon renunciation—Antenuptial or postnuptial agreements.

(a) Subject to the provisions of section 18-212 a widow or surviving husband shall by such devise or bequest be barred of any statutory rights or interest she or he may have in the real and personal estate of the deceased spouse or the dower rights provided by section 18-201a, as the case may be, unless within six months after the will of the deceased spouse is admitted to probate, she or he shall file in the probate court a written renunciation to the following effect:

"I, A B, widow (or surviving husband of late of \_\_\_\_\_, deceased, do hereby renounce and quit all claim to any devise or bequest made to me by the last will of my husband (or wife) exhibited and proved according to law; and I elect to take in lieu thereof my legal share of the real and personal property of my said spouse (except that in lieu of my legal share of the real property, I elect to take dower in all the real property of my deceased spouse to which such right is applicable).

(b) In similar manner, where the deceased spouse has died intestate of any real estate and letters of administration have been issued with respect to the estate of such deceased spouse, the surviving spouse shall be barred of the dower rights provided by section 18-201a, unless within six months after such letters of administration have been issued with respect to the estate of the deceased spouse, she or he shall file in the probate court a written renunciation of her or his legal share of such intestate real estate to the following effect:

I, A B, widow (or surviving husband) of \_\_\_\_\_, deceased, in lieu of my legal share of the real property of which my deceased spouse died intestate, do hereby elect to take dower in all the real property of my deceased spouse to which such right is applicable.

(c) If, during said period of six months, a suit should be instituted to construe the will of the deceased spouse, the period of six months for the filing of such renunciation or election shall commence to run from the date when such suit shall be finally determined, by appeal or otherwise. A renunciation or election may be made in behalf of any spouse unable to act for himself or herself by reason of infancy, incompetency, or inability to manage his or her property, by the guardian or other fiduciary acting for such spouse when authorized so to do by the court having jurisdiction of the person of such spouse. The time for renunciation by any spouse may be extended before its expiration by an order of the probate court for successive periods of not exceeding six months each upon petition showing reasonable cause and on notice given to the personal representative and to such other persons in such manner as the probate court may direct.

(d) In any case where the wife or husband has made no devise or bequest to the spouse, and in any



case where nothing passes by any purported devise or bequest, the surviving spouse shall be deemed to have filed a written renunciation as provided in subsection (a) of this section (subject to his or her right to elect dower in lieu of the legal share of real estate within six months from probate of the will provided in subsection (b) of this section).

(e) By renouncing all claim to any and all devises and bequests made to her or him by the will of her husband or his wife pursuant to the provisions of subsection (a) of this section, or in the event that a renunciation shall be deemed to be effected pursuant to the provisions of subsection (d) of this section, the surviving spouse shall be entitled to such share or interest in the real and personal estate of the deceased spouse (including dower if elected in lieu of the legal share in the real estate) which she or he would have taken had the deceased spouse died intestate, except that in neither event shall the surviving spouse be entitled to more than one-half of the net estate bequeathed and devised by said will, or, if dower be elected, one-half of the net personal estate bequeathed and dower in the real estate devised.

(f) Notwithstanding any other provision of law now or heretofore in effect in the District of Colum-

bia, any valid antenuptial or postnuptial agreement which shall have been entered into by the spouses shall govern and the provisions thereof shall determine the rights of the surviving spouse in the real and personal property of the deceased spouse, and the administration thereof, but nothing contained in this subsection shall prohibit any spouse from accepting the benefits of any devise or bequest made to him or her by the deceased spouse. (Aug. 31, 1957, 71 Stat. 561, Pub. L. 85-244, § 6; Sept. 14, 1961, 75 Stat. 516, Pub. L. 87-246, § 4.)

#### AMENDMENT

1961—Act Sept. 14, 1961, amended the section generally. For comparison with prior provisions of this section see section in main volume of the Code.

#### EFFECTIVE DATE OF 1961 AMENDMENT

Section 8 of act Sept. 14, 1961, provided that: "The foregoing provisions of this Act [amending sections 18-101, 18-201a, 18-204, 18-211 and 30-201] shall become effective six months after the date of enactment of this Act."

#### POPULAR NAME

Section 1 of act Sept. 14, 1961, provided: "That this Act (amending sections 18-101, 18-201a, 18-204, 18-211, and 30-201) may be cited as the 'Marital Property Rights Amendment of 1961'."

#### CROSS REFERENCE

Right of dower of husband and wife, see § 18-201a.



## TITLE 19.—WILLS

### Chapter 1.—WILLS IN GENERAL

#### § 19-103. Form of will—Witnesses—Alteration—Revocation.

##### NOTES TO DECISIONS

Republication 11.50  
Revocation 12

##### 11.50 Republication

Republication merely ratifies will as modified by codicils, and instruments are read together as expressing single act. *M. H. Remon and R. R. Wenzel v. American Security & Trust Co., Executor et ano.* (1961, 288 F. 2d 849, 110 U.S. App. D.C. 37).

##### 12. Revocation

One codicil revokes another if such intent is unmistakably clear. *M. H. Remon and R. R. Wenzel v. American Security & Trust Co., Executor, et ano.* (1961, 288 F. 2d 849, 110 U.S. App. D.C. 37).

#### § 19-108. Revival of will after revocation.

##### NOTES TO DECISIONS

Republication 2  
Revocation 3

##### 2. Republication

Republication merely ratifies will as modified by codicils, and instruments are read together as expressing single act. *M. H. Remon and R. R. Wenzel v. American Security & Trust Co., Executor et ano.* (1961, 288 F. 2d 849, 110 U.S. App. D.C. 37).

##### 3. Revocation

One codicil revokes another if such intent is unmistakably clear. *M. H. Remon and R. R. Wenzel v. American Security & Trust Co., Executor et ano.* (1961, 288 F. 2d 849, 110 U.S. App. D.C. 37).

Instrument designated as "a" codicil, adding bequest and reaffirming will, which named bank as executor and trustee, did not revoke prior codicil naming testator's wife and daughter as coexecutrices. *Id.*





## TITLE 21.—GUARDIAN AND WARD, AND INSANE PERSONS

### Chapter 3.—INSANE PERSONS, INQUESTS

#### § 21-315. Commitment after trial.

##### NOTES TO DECISIONS

##### 50. District not a voluntary creditor

District of Columbia was entitled to reimbursement for expenses of treatment of incompetent veteran from committee of the veteran from date of her appointment until the veteran was transferred to the rolls of the Veterans Administration which now bears the costs involved, since the District was not a voluntary "creditor" within the statute exempting from claims of "creditors" payments of benefits due or to become due under any law administered by the Veterans Administration. *T. Savoid, Committee etc. v. District of Columbia* (1961, 288 F. 2d 851, 110 U.S. App. D.C. 39).

#### § 21-318. Liability of relatives for costs of maintenance and treatment.

##### NOTES TO DECISIONS

##### 2.50 District not a voluntary creditor

District of Columbia was entitled to reimbursement for expenses of treatment of incompetent veteran from

committee of the veteran from date of her appointment until the veteran was transferred to the rolls of the Veterans Administration which now bears the costs involved, since the District was not a voluntary "creditor" within the statute exempting from claims of "creditors" payments of benefits due or to become due under any law administered by the Veterans Administration. *T. Savoid, Committee etc. v. District of Columbia* (1961, 288 F. 2d 851, 110 U.S. App. D.C. 39).

#### § 21-327. Arrest at other than public places.

##### NOTES TO DECISIONS

##### 3. Sufficiency of evidence

If one adjudged insane never saw or talked with physicians who filed affidavits prior to his arrest, and spoke only momentarily after arrest to physician who testified that examination disclosed need for hospital care, adjudication of insanity must be vacated. *In re R. V. Helman* (1961, 288 F. 2d 159, 109 U.S. App. D.C. 375).





PART IV  
CRIMINAL LAW AND PROCEDURE  
TITLE 22.—CRIMINAL OFFENSES

Chapter 5.—ASSAULT—MAYHEM—THREAT OF  
BODILY HARM

§ 22-501. Assault with intent to kill, rob, rape, or  
poison.

NOTES TO DECISIONS

3.50 Identity of victim

It was not necessary to allege identity of person sought to be robbed where defendant was charged with assault to commit robbery, and such information, if desired by defendant, should have been sought by motion for a bill of particulars. *S. E. Young v. United States* (1961, 288 F. 2d 398, 109 U.S. App. D.C. 414).

§ 22-504. Assault or threatened assault in a menacing manner.

NOTES TO DECISIONS

Cross-examination 4.50  
Admissibility of evidence 6  
Corroboration 9  
Instructions 15  
Review 19

4.50 Cross-examination

Cross-examination is an absolute right. *J. Bandoni v. United States* (D.C. Mun. App. 1961, 171 A. 2d 748).

In prosecution for assault, cross-examination of the prosecutrix respecting her past experiences, emotional history and background to shed light on her testimonial reliability was not unduly curtailed. *Id.*

6. Admissibility of evidence

Time alone is not controlling in determining the spontaneity of an exclamation, and of equal importance is whether the declaration was influenced by external circumstances of physical shock or stress of nervous excitement. *J. Bandoni v. United States* (D.C. Mun. App. 1961, 171 A. 2d 748).

Admitting testimony of witness as to her conversation with the assaulted complainant though more than an hour occurred between the assault and the report to the witness was not error as violating the hearsay rule. *Id.*

9. Corroboration

Testimony of complaining witness in prosecution for assault was sufficiently corroborated. *D. Konvalinka v. United States* (1961, 287 F. 2d 346, 109 U.S. App. D.C. 307; aff'g 162 A. 2d 778).

15. Instructions

Failure to instruct jury as to effect of five-hour delay in reporting alleged assault to the police was not error where no such instruction was requested. *J. Bandoni v. United States* (D.C. Mun. App. 1961, 171 A. 2d 748).

19. Review

Defendant prosecuted for assault was not entitled to a continuance and trial before a new jury panel because members thereof were prejudiced in that on the day before defendant's trial his wife was convicted by a jury for carrying a dangerous weapon and the defendant's and wife's jury were selected from the same array, where the defendant's contention had no support in the record. *J. Bandoni v. United States* (D.C. Mun. App. 1961, 171 A. 2d 748).

Chapter 9.—DOMESTIC RELATIONS

§ 22-903. Willful neglect or refusal to support wife or  
minor child—Punishment—Order of allowance—  
Recognizance—Trial under original charge.

NOTES TO DECISIONS

.50. Abuse of Discretion

No abuse of discretion appeared in denial of motion to withdraw guilty plea to nonsupport charge against defendant who, though he had previously pleaded guilty to similar charge, contended that he did not recognize significance of charge and that failure to support was due to financial inability. *W. Campbell Jr. v. United States* (D.C. Mun. App. 1961, 168 A. 2d 532).

Chapter 11.—DISORDERLY CONDUCT

§ 22-1107. Unlawful assembly—Profane and indecent  
language.

NOTES TO DECISIONS

1. Evidence

Admission, in prosecution for using profane, indecent and obscene language, disorderly conduct, and making rude and obscene gestures, of witnesses' conclusions that language was profane, obscene and indecent was reversible error, even though proof of actions may have been sufficient to sustain conviction. *C. P. Heilman, Jr. v. District of Columbia* (D.C. Mun. App. 1961, 172 A. 2d 141).

§ 22-1112. Lewd, indecent, or obscene acts.

NOTES TO DECISIONS

4. Evidence

Evidence of government which presented two women complainants, who testified they saw defendant exposing himself, positively identifying him as maintenance man in their apartment development, was sufficient to sustain finding of his guilt of obscene and indecent exposure notwithstanding his production of five alibi witnesses. *R. Campbell v. District of Columbia* (D.C. Mun. App. 1961, 172 A. 2d 557).

§ 22-1121. Disorderly conduct—Generally.

NOTES TO DECISIONS

Construction 1  
Evidence 1.50  
Intent 3

1. Construction

Defendant in ordering followers into hostile audience to stop heckling of speech and assault of one spectator as direct result of defendant's command to his followers, authorized conviction of disorderly conduct. *G. L. Rockwell v. District of Columbia* (D.C. Mun. App. 1961, 172 A. 2d 549).

1.50. Evidence

Admission, in prosecution for using profane, indecent and obscene language, disorderly conduct, and making rude and obscene gestures, of witnesses' conclusions that language was profane, obscene and indecent was reversible error, even though proof of actions may have been sufficient to sustain conviction. *C. P. Heilman, Jr. v. District of Columbia* (D.C. Mun. App. 1961, 172 A. 2d 141).

3. Intent

Under statute, one lacking intent to be disorderly may nevertheless be guilty if conduct is such that breach of

peace may be occasioned thereby. *G. L. Rockwell v. District of Columbia* (D.C. Mun. App. 1961, 172 A. 2d 549).

### Chapter 13.—FALSE PRETENSES—FALSE PERSONATION

#### § 22-1301. False pretenses.

##### NOTES TO DECISIONS

Inconsistent offenses 11.50  
Proceeds of check 21.50

##### 11.50. Inconsistent offenses

Under District of Columbia law, grand larceny and false pretenses are not inconsistent offenses. *P. A. Skantze v. United States* (1961, 288 F. 2d 416, 110 U.S. App. D.C. 14).

##### 21.50. Proceeds of check

Embassy employee who, with intent to steal, represented to superiors that money was needed for embassy's cash account and thus procured their signatures to checks, the proceeds of which he kept for himself, falsifying entries in cash journal to cloak transaction, was guilty of false pretenses and grand larceny, under District of Columbia law. *P. A. Skantze v. United States* (1961, 288 F. 2d 416, 110 U.S. App. D.C. 14).

### Chapter 15.—GAMBLING

#### § 22-1502. Possession of lottery or policy tickets.

##### NOTES TO DECISIONS

Confrontation of informer 4.50  
Sufficiency of evidence 17

##### 4.50. Confrontation of informer

Defendant, accused of receiving stolen goods and of possession of lottery tickets, was not entitled to confront and cross-examine informer, upon whose information search warrant was in part based, where warrant was issued upon an ample showing of probable cause. *O. M. Madre v. United States* (D.C. Mun. App. 1961, 173 A. 2d 917).

##### 17. Sufficiency of evidence

Evidence sustained conviction of receiving stolen goods. *O. M. Madre v. United States* (D.C. Mun. App. 1961, 173 A. 2d 917).

#### § 22-1505. Gambling premises—Definition—Prohibition against maintaining—Forfeiture—Liens—Deposit of moneys in Treasury—Penalty—Subsequent Offenses.

\* \* \* \* \*

(c) All moneys, vehicles, furnishings, fixtures, equipment, stock (including, without limitation, furnishings and fixtures adaptable to nongambling uses, and equipment and stock for printing, recording, computing, transporting, safekeeping, or communication), or other things of value used or to be used—

(1) in carrying on or conducting any lottery, or the game or device commonly known as a policy lottery or policy, contrary to the provisions of section 22-1501;

(2) in setting up or keeping any gaming table, bank, or device contrary to the provisions of 22-1504; or

(3) in maintaining any gambling premises, shall be subject to seizure by any member of the Metropolitan Police force, or the United States Park Police, or the United States marshal, or any deputy marshal, for the District of Columbia, and any property seized regardless of its value shall be proceeded against in the municipal court for the District of Columbia by libel action brought in the name of the District of Columbia by the Corporation Counsel

or any of his assistants, and shall, unless good cause be shown to the contrary, be forfeited to the District of Columbia and shall be made available for the use of any agency of the government of the District of Columbia, or otherwise disposed of as the Commissioners of the District of Columbia may, by order or by regulation, provide: *Provided*, That if there be bona fide liens against the property so forfeited, then such property shall be disposed of by public auction. The proceeds of the sale of such property shall be available, first, for the payment of all expenses incident to such sale; and, second, for the payment of such liens; and the remainder shall be deposited in the Treasury of the United States to the credit of the District of Columbia. To the extent necessary, liens against said property so forfeited shall, on good cause shown by the lienor, be transferred from the property to the proceeds of the sale of the property.

\* \* \* \* \*

(Sept. 21, 1961, 75 Stat. 540, Pub. L. 87-259, § 1.)

##### AMENDMENT

1961—Section 1 of act Sept. 21, 1961, amended subsection (c) so as to give the Municipal Court for the District of Columbia jurisdiction over libel actions involving such seized property regardless of its value and also providing that the action be brought in the name of the District of Columbia by the Corporation Counsel or any of his assistants. The act made other amendments as well. See original subsection (c) in main volume.

##### CONSTRUCTION OF ACT SEPT. 21, 1961, AND DELEGATION OF AUTHORITY

Section 2 of act Sept 21, 1961, provided that: "This Act [amending subsection (c)] shall not be considered as affecting the authority vested in the Board of Commissioners of the District of Columbia by Reorganization Plan Numbered 5 of 1952 (66 Stat. 824), and the performance of any function vested by said plan in the Board of Commissioners or in any office or agency under the jurisdiction and control of said Board of Commissioners shall continue to be subject to delegation by said Board of Commissioners in accordance with section 3 of such plan. Any function vested by this Act in any agency established pursuant to such plan shall be deemed to be vested in said Board of Commissioners and shall be subject to delegation in accordance with said plan."

### Chapter 18.—HOUSEBREAKING

#### § 22-1801. Definition and penalty.

##### NOTES TO DECISIONS

Corpus delicti 3.50  
Evidence 6  
Suppression 6.50  
Witnesses, evidence 7  
Voluntary confession 15.50

##### 3.50. Corpus delicti

Corpus delicti under count charging homicide in perpetration of a housebreaking did not require independent proof that death occurred in perpetration of housebreaking. *United States v. J. A. Naples* (1961, 192 F. Supp. 23).

##### 6. Evidence

Evidence sustained defendant's conviction of housebreaking and petit larceny. *United States v. J. A. Naples* (1961, 192 F. Supp. 23).

##### 6.50. — Suppression

Ordinarily, one seeking to challenge legality of search or seizure must establish that he was victim of alleged invasion of privacy. *F. Hair & J. I. Burroughs v. United States* (1961, 289 F. 2d 894, 110 U.S. App. D.C. 153).

Evidence obtained under warrant issued on basis of observations derived by police officers from illegal entry is inadmissible. *Id.*



## 7. Witnesses, evidence

Where prosecution's case rested largely upon testimony of a sole key eyewitness and there was ample ground for suspicion of inconsistencies in eyewitness' identification, trial judge abused his discretion in failing to order production of those parts of the witness' grand jury testimony relating to same subject testified to at trial. *W. E. De Binder v. United States* (1961, 292 F. 2d 737, — U.S. App. D.C. —).

## 15.50. Voluntary confession

Evidence established that defendant's confession made at jail to police officer was voluntary. *United States v. J. A. Naples* (1961, 192 F. Supp. 23).

## Chapter 20.—INDECENT PUBLICATIONS

## § 22-2001. Definition and penalty.

## NOTES TO DECISIONS

Instructions 3.50  
Public trial 4.50  
Witnesses, evidence 28

## 3.50. Instructions

Statement in charge to jury that material charged in indictment was, in court's opinion, actually obscene in eyes of law did not require reversal of obscenity conviction, considering whole charge which left issue of obscenity for jury and stated that judge's comments on evidence were not binding on jury. *A. J. Heinecke v. United States* (1961, 294 F. 2d 727, — U.S. App. D.C. —).

## 4.50. Public trial

In prosecution for possessing obscene pictures with intent to exhibit them, defendant's right to a public trial was not denied because when the alleged obscene film was shown in court the public, except newspaper reporters, were excluded. *B. W. Lancaster v. United States* (1961, 293 F. 2d 519, 110 U.S. App. D.C. 331).

## 28. Witnesses, evidence

Where prosecution's case rested largely upon testimony of a sole key eyewitness and there was ample ground for suspicion of inconsistencies in eyewitness' identification, trial judge abused his discretion in failing to order production of those parts of the witness' grand jury testimony relating to same subject testified to at trial. *W. E. De Binder v. United States* (1961, 292 F. 2d 737, 110 U.S. App. D.C. 244).

## Chapter 22.—LARCENY—RECEIVING STOLEN GOODS

## § 22-2201. Grand larceny.

## NOTES TO DECISIONS

Inconsistent offenses 9.50  
Larceny by conversion 14.50  
Proceeds of check 18.50  
Search and seizure 20.50

## 9.50. Inconsistent offenses

Under District of Columbia law, grand larceny and false pretenses are not inconsistent offenses. *P. A. Skantze v. United States* (1961, 288 F. 2d 416, 110 U.S. App. D.C. 14).

## 14.50. Larceny by conversion

One who obtains money from another upon representation that he will perform certain service therewith for the latter, intending at the time to convert the money, and actually converting it, to his own use, is guilty of larceny. *P. A. Skantze v. United States* (1961, 288 F. 2d 416, 110 U.S. App. D.C. 14).

## 18.50. Proceeds of check

Embassy employee who, with intent to steal, represented to superiors that money was needed for embassy's cash account and thus procured their signatures to checks, the proceeds of which he kept for himself, falsifying entries in cash journal to cloak transaction, was guilty of false pretenses and grand larceny, under District of Columbia law. *P. A. Skantze v. United States* (1961, 288 F. 2d 416, 110 U.S. App. D.C. 14).

## 20.50. Search and seizure

Probable cause for arrest existed when driver of automobile, who started to drive away without his lights on, was stopped by police and dome light showed articles in automobile which had just been reported stolen from another automobile in the area as driver got out to show officers his registration card, and such probable cause was sufficient to support search and seizure of reportedly stolen articles. *R. A. Campbell, Jr. v. United States* (1961, 289 F. 2d 775, 110 U.S. App. D.C. 109).

## § 22-2202. Petit larceny—Order of restitution.

## NOTES TO DECISIONS

## 11.50. Search and seizure

Probable cause for arrest existed when driver of automobile, who started to drive away without his lights on, was stopped by police and dome light showed articles in automobile which had just been reported stolen from another automobile in the area as driver got out to show officers his registration card, and such probable cause was sufficient to support search and seizure of reportedly stolen articles. *R. A. Campbell, Jr. v. United States* (1961, 289 F. 2d 775, 110 U.S. App. D.C. 109).

## § 22-2203. Larceny after trust.

## NOTES TO DECISIONS

Delivery of property .50  
Independent contractor 3.50

## .50. Delivery of property

For purposes of statute providing punishment for one guilty of larceny after trust, delivery of property to defendant by owner's vendor, acting for owner, was tantamount to delivery by owner; but even if it were not, defendant would not be entitled to acquittal, since statute does not require delivery by owner. *United States v. A. Manolias* (1961, 190 F. Supp. 234).

## 3.50. Independent contractor

Independent contractor, who had been entrusted with property and who had complete dominion and control over it for purpose of installing it in connection with electrical work which he had contracted to do, was not a mere custodian of property and could be convicted of larceny after trust. *United States v. A. Manolias* (1961, 190 F. Supp. 234).

## § 22-2204. Unauthorized use of vehicles.

## NOTES TO DECISIONS

## 4. Evidence

Evidence was sufficient to show ownership of automobile and corporate existence of owner and to sustain conviction of unauthorized use of automobile without consent of owner. *J. C. Dixon v. United States* (1961, 292 F. 2d 768, 110 U.S. App. D.C. 275).

Admission of evidence beyond scope of bill of particulars as to date when automobile was first known to be missing was not error, in prosecution for unauthorized use of automobile without consent of owner. *Id.*

## § 22-2205. Receiving stolen goods.

## NOTES TO DECISIONS

Evidence—Admissibility 3  
Confrontation of informer 3.50  
Corroboration 4  
Guilty knowledge 4.50  
Sufficiency 5

## 3. Evidence—Admissibility

Evidence that defendant, charged with receiving stolen property, had on previous occasion knowingly received stolen property was admissible for limited purpose of showing intent and guilty knowledge. *W. J. Blackburn v. United States* (D.C. Mun. App. 1961, 171 A. 2d 254).

## 3.50. Confrontation of informer

Defendant, accused of receiving stolen goods and of possession of lottery tickets, was not entitled to confront and cross-examine informer, upon whose information search warrant was in part based, where warrant was issued upon an ample showing of probable cause. *O. M. Madre v. United States* (D.C. Mun. App. 1961, 173 A. 2d 917).



## 4. — Corroboration

Uncorroborated testimony of shoplifters as to origin and ownership of goods, while normally of questionable reliability, is sufficient, if believed, to warrant conviction for receiving stolen goods. *M. A. Payne v. United States* (D.C. Mun. App. 1961, 171 A. 2d 509).

## 4.50. Guilty knowledge

Accused's knowledge of goods' true character may be inferred from great disparity between sale price and prevailing price for similar or identical goods. *M. A. Payne v. United States* (D.C. Mun. App. 1961, 171 A. 2d 509).

## 5. — Sufficiency

Evidence sustained conviction of receiving stolen goods. *O. M. Madre v. United States* (D.C. Mun. App. 1961, 173 A. 2d 917).

## Chapter 24.—MURDER—MANSLAUGHTER

## § 22-2401. Murder in the first degree—Purposeful killing—Killing while perpetrating certain crimes.

## NOTES TO DECISIONS

Corpus delicti 7  
Housebreaking 14  
Prejudicial cross-examination 23.50  
Voluntary confession 37

## 7. Corpus delicti

Corpus delicti under count charging homicide in perpetration of a housebreaking did not require independent proof that death occurred in perpetration of housebreaking. *United States v. J. A. Naples* (1961, 192 F. Supp. 23).

## 14. Housebreaking

Killing of deceased by defendant as he was securing loot and preparing to leave premises into which he had broken was a homicide committed in perpetration of housebreaking. *United States v. J. A. Naples* (1961, 192 F. Supp. 23).

## 23.50 Prejudicial cross-examination

In murder prosecution wherein sole defense was insanity, and defendant's gibberish testimony was such as to raise issues as to whether defendant feigned such testimony and whether at time of the third trial his mental condition represented his condition at time of act charged, cross-examination disclosing defendant's failure to take stand at two previous trials which resulted in convictions was erroneous and was not harmless but was sufficiently prejudicial to warrant the granting of a mistrial even though defense made no request for cautionary instructions. *W. L. Stewart v. United States* (1961, 366 U.S. 1, 81 S. Ct. 941; Reversing 275 F. 2d 617).

## 37. Voluntary confession

Evidence established that defendant's confession made at jail to police officer was voluntary. *United States v. J. A. Naples* (1961, 192 F. Supp. 23).

## § 22-2404. Punishment for murder in first and second degrees.

## NOTES TO DECISIONS

## 3.50 Prejudicial cross-examination

In murder prosecution wherein sole defense was insanity, and defendant's gibberish testimony was such as to raise issues as to whether defendant feigned such testimony and whether at time of the third trial his mental condition represented his condition at time of act charged, cross-examination disclosing defendant's failure to take stand at two previous trials which resulted in convictions was erroneous and was not harmless but was sufficiently prejudicial to warrant the granting of a mistrial even though defense made no request for cautionary instructions. *W. L. Stewart v. United States* (1961, 366 U.S. 1, 81 S. Ct. 941; reversing 275 F. 2d 617).

## § 22-2405. Punishment for manslaughter.

## NOTES TO DECISIONS

Confession .50  
Right to counsel 7

## .50. Confession

Confession secured from defendant during thirty-four-hour period between his arrest and his appearance before

commissioner would be suppressed because of such delay. *United States v. J. W. Killough* (1961, 193 F. Supp. 905).

Any confessions which result from illegal detention, no matter how voluntary or trustworthy, are excluded from evidence. *Id.*

A defendant's second confession, after appearance before a commissioner, following illegal detention, could not be excluded on theory it was product of a deliberate police attempt to subvert Rules of Criminal Procedure, where the confession was made to a police officer who did not approach defendant with purpose of securing a reaffirmation of invalid confessions defendant made prior to appearance before a committing magistrate. *Id.*

## 7. Right to counsel

Police can interrogate a suspect before giving him an opportunity to secure counsel. *United States v. J. W. Killough* (1961, 193 F. Supp. 905).

Action of an official in allowing a police officer to see defendant during adjournment of a preliminary hearing, but before he had seen counsel was not a violation of the commitment order, the Federal Rules of Criminal Procedure, and the constitutional bar against self-incrimination and guarantee of right to counsel, and did not render admissions made by defendant during such conversation inadmissible. *Id.*

The Rules of Criminal Procedure give an accused who has funds to hire counsel the right to do so, and right to have a preliminary hearing, should he desire one with counsel's assistance, postponed until he secures that assistance.

Constitutional privilege against self-incrimination did not give illegally detained defendant an absolute right to see counsel before a valid confession could be given by him, or to have counsel present with him at time he made a confession. *Id.*

## Chapter 25.—PERJURY

## § 22-2501. Perjury—Subordination of perjury.

## NOTES TO DECISIONS

Predication of indictment 20.50  
Sufficiency of indictment 23.50

## 20.50 Predication of indictment

A perjury indictment could not be grounded upon a knowingly false answer to a question placed by superintendent of insurance, in an application for a license to act as an insurance solicitor. *C. S. Nelson v. United States* (1961, 288 F. 2d 376, 109 U.S. App. D.C. 392).

## 23.50 Sufficiency of indictment

Indictment charging defendant generally in statutory language, with three counts of perjury, would be deemed sufficient, especially where record indicated that defendant had not been misled or prejudiced in his defense, and had not moved for a bill of particulars. *C. S. Nelson v. United States* (1961, 288 F. 2d 376, 109 U.S. App. D.C. 392).

## Chapter 27.—PROSTITUTION—PANDERING

## § 22-2701. Prostitution—Inviting for purposes of, prohibited.

## NOTES TO DECISIONS

## 4. Evidence

Evidence sustained conviction of soliciting for purpose of prostitution. *R. Golden v. United States* (D.C. Mun. App. 1961, 167 A. 2d 796).

## § 22-2722. Keeping bawdy or disorderly houses.

## NOTES TO DECISIONS

Arrest 2  
Disorderly house 3.50  
Evidence 4

## 2. Arrest

Parade of males into defendant's apartment and her past criminal record as convicted madam and vagrant provided adequate justification for issuance of warrant for arrest resulting in prosecution for keeping disorderly house. *C. J. Bennett, etc. v. United States* (D.C. Mun. App. 1961, 171 A. 2d 252).

**3.50 Disorderly house**

"Disorderly house" is one where acts are performed which tend to corrupt morals of community or promote breaches of peace. *M. A. Payne v. United States* (D.C. Mun. App. 1961, 171 A. 2d 509).

Elements necessary to sustain conviction for maintaining disorderly house are that acts are contrary to law and subversive of public morals, that house is commonly resorted to for commission of such acts, and that proprietor knows, or should in reason, know facts and either procures it to be done, connives at it, or does not prevent it. *Id.*

Conduct sufficient to sustain conviction for maintaining disorderly house need not disrupt peace and quiet or be open to public observation so long as it would be offensive to public sensibilities if its presence in community were generally known. *Id.*

**4. Evidence**

Evidence sustained conviction for keeping disorderly house. *C. J. Bennett, etc. v. United States* (D.C. Mun. App. 1961, 171 A. 2d 252).

Evidence sustained conviction of maintaining disorderly house. *M. A. Payne v. United States* (D.C. Mun. App. 1961, 171 A. 2d 509).

Testimony on single act of prostitution in house and unlawful sales prior to period specified in information were admissible in prosecution for maintaining disorderly house. *Id.*

**Chapter 28.—RAPE****§ 22-2801. Definition and penalty.****NOTES TO DECISIONS****15.50 — Suppression**

Ordinarily, one seeking to challenge legality of search or seizure must establish that he was victim of alleged invasion of privacy. *F. Hair & J. I. Burroughs v. United States* (1961, 289 F. 2d 894, 110 U.S. App. D.C. 153).

Evidence obtained under warrant issued on basis of observations derived by police officers from illegal entry is inadmissible. *Id.*

**Chapter 29.—ROBBERY****§ 22-2901. Robbery.****NOTES TO DECISIONS****12. Suppression**

Ordinarily, one seeking to challenge legality of search or seizure must establish that he was victim of alleged invasion of privacy. *F. Hair & J. I. Burroughs v. United States* (1961, 289 F. 2d 894, 110 U.S. App. D.C. 153).

Evidence obtained under warrent issued on basis of observations derived by police officers from illegal entry is inadmissible. *Id.*

**Chapter 31.—TRESPASS—INJURIES TO PROPERTY****§ 22-3102. Unlawful entry on property.****NOTES TO DECISIONS****6. Reasonable cause for arrest**

Court in prosecution for unlawful entry was not required to inquire into legality or illegality of defendant's arrest, where no evidence was obtained as result of arrest. *L. E. Smith v. United States* (D.C. Mun. App. 1961, 173 A. 2d 739).

**§ 22-3112. Destroying or defacing buildings, statues, monuments, offices, dwellings, and structures.****NOTES TO DECISIONS****5. Variance in proof**

There was no fatal variance between information charging defendant with defacing doors of elevator in private building by drawing, marking and writing sign or figure thereon and proof which showed that defendant, who did

not ask for any further particulars, put stickers on door. *J. Patler, etc. v. District of Columbia* (D.C. Mun. App. 1961, 171 A. 2d 508).

**Chapter 32.—WEAPONS****§ 22-3204. Carrying concealed weapons.****NOTES TO DECISIONS**

Illegal search 9.50  
Search and seizure 19.50

**9.50 Illegal search**

Impounding of automobile, which motorist had parked in front of police station after being ordered to follow police officers to police precinct, was not authorized under regulation permitting impounding of unattended vehicles found parked in violation of traffic regulation, and pistol discovered in search of automobile was not admissible. *D. A. Williams v. United States* (D.C. Mun. App. 1961, 170 A. 2d 233).

**19.50 Search and seizure**

Removal of unlicensed pistol from floor of parked automobile did not constitute an unreasonable search and seizure where officer, who discovered pistol lying in plain view on automobile floor, was making an investigation at scene of reported burglary and after noticing defendant's keys in ignition in violation of law had opened automobile door to remove keys. *C. A. Campbell v. United States* (D.C. Mun. App. 1961, 174 A. 2d 87).

**Chapter 33.—VAGRANCY****§ 22-3302. "Vagrants" defined.****NOTES TO DECISIONS****7. Evidence**

Evidence was insufficient to sustain vagrancy conviction. *E. R. Harris v. District of Columbia* (D.C. Mun. App. 1961, 167 A. 2d 359).

Evidence sustained conviction of being a vagrant. *Y. Pinkney v. District of Columbia* (D.C. Mun. App. 1961, 168 A. 2d 198).

**Chapter 34.—MISCELLANEOUS****Sec.**

22-3401. Omitted.  
22-3402. Repealed.  
22-3403. Repealed.

**§ 22-3401. Omitted.**

Sec. act Leg. Assembly, Aug. 23, 1871, p. 96, ch. 69, § 21, defined a "Gift enterprise". Since act Sept. 21, 1961, Pub. L. 87-267, § 1, repealed sections 22-3402 and 22-3403 which made it unlawful to engage in a "gift enterprise" business and imposed certain penalties for so doing, this section is now obsolete and is therefore omitted.

§§ 22-3402, 22-3403. Repealed Sept. 21, 1961, 75 Stat. 565, Pub. L. 87-267, § 1.

Section R.S., D.C., § 1176, made it unlawful to engage in a gift enterprise as defined in section 22-3401.

Section R.S., D.C., § 1177, imposed penalties for engaging in any gift-enterprise business in the District.

**Chapter 35.—SEXUAL PSYCHOPATHS****§ 22-3502. Sodomy.****NOTES TO DECISIONS****REVIEW**

Record on appeal from sodomy conviction, challenged on grounds of sufficiency of evidence presented by government, revealed no error affecting substantial rights of accused. *W. Hehl v. United States* (1960, 288 F. 2d 131, 109 U.S. App. D.C. 346).





## TITLE 23.—CRIMINAL PROCEDURE

### Chapter 3.—SEARCH WARRANTS AND ARREST

#### § 23-301. Issuance upon complaint under oath—Contents—Warrant—Affidavit—Form.

##### 8. Probable cause

Allegations in affidavits upon basis of which a search warrant was issued, to the effect, among other things, that certain drugs were delivered to a certain person in a certain apartment, were sufficient to create probable cause and justify issuance of search warrant for items described. *G. C. Hunt v. United States* (D.C. Mun. App. 1961, 171 A. 2d 515).

##### 10. — Validity

Items not described in a search warrant but discovered in course of search made pursuant to such warrant were admissible in evidence. *G. C. Hunt v. United States* (D.C. Mun. App. 1961, 171 A. 2d 515).

When a lawful search is executed pursuant to a lawful search warrant, contraband may be seized although not specifically described in the warrant. *Id.*

Premises under control of a person arrested may be searched contemporaneously as an incident to the arrest, and material seized as a result of such search may be introduced in evidence, even though not described in a search warrant. *Id.*

##### 10. Validity of search

Where two plain-clothes men and complaining witness went to defendant's home with intention of making a search, if possible, for stolen goods and not to talk with him about reports of his possible involvement in three robberies, seizure of stolen property found in apartment was not incident to lawful arrest and was unlawful and could not be justified by exceptional circumstances and fruits of search were inadmissible in criminal prosecution. *United States v. E. E. Evans* (1961, 194 F. Supp. 90).

Defendant's invitation to "come on in" made to two plain-clothes men and complaining witnesses did not constitute a consent to search of apartment, and defendant did not waive any right to complain that search violated the Fourth Amendment. *Id.*



## TITLE 24.—PRISONERS AND THEIR TREATMENT

### Chapter 3.—INSANE CRIMINALS

§ 24-301. Commitment of persons of unsound mind to the District of Columbia General Hospital—Certification to the court—Acquittal by jury on grounds of insanity—Confinement in a mental institution—Conditions for release after confinement—Conditional release—Expenses—Writ of habeas corpus—Inconsistent provisions of Federal Statutes superseded.

#### NOTES TO DECISIONS

Acceptance of guilty plea .50  
Burden of proof after commitment 2  
Certification of sanity 3  
Constitutionality 7  
Defense of insanity 8.50  
Discretion of court 10  
Due process 10.50  
Habeas corpus 13  
Potentially dangerous 20  
Prejudicial cross-examination 20.50  
Psychiatrist's report 23.50  
Public policy 24

#### .50. Acceptance of guilty plea

Where psychiatrist's report on defendant's competency to stand trial on bad check charge had included statement that defendant's crimes were product of specified mental disease particularly affecting financial judgment and that defendant required further treatment to insure against repetition of the offenses, court properly refused to accept plea of guilty and proceeded to trial to determine that defendant was not guilty by reason of insanity, though defendant had been judicially declared competent to stand trial and to assist in his own defense. *W. Overholser, Sup't etc. v. F. C. Lynch* (1961, 288 F. 2d 388, 109 U.S. App. D.C. 404).

#### 2. Burden of proof after commitment

Once a man has been committed to a hospital after verdict of not guilty by reason in insanity, government need not thereafter be forced to prove his insanity as price of continuing treatment. *W. Overholser, Sup't etc. v. F. C. Lynch* (1961, 288 F. 2d 388, 109 U.S. App. D.C. 404).

#### 3. Certification of sanity

Mental hospital superintendent's return in habeas corpus proceeding by inmate, asserting generally that inmate had not recovered from "abnormal mental condition" and required further treatment, without explaining quoted phrase or describing past or future treatment, was insufficient on its face. *H. T. O'Beirne v. W. Overholser* (1961, 193 F. Supp. 652).

One who had been found not guilty by reason of insanity and committed to mental hospital could not be detained in hospital beyond period of maximum sentence possible for the offense charged, because of "sociopathic personality" which was not sufficient basis for a civil adjudication of mental incompetency, even if such condition tended to make him an habitual petty criminal. *Id.*

Fact that a person is an habitual petty criminal could not subject him to permanent incarceration in criminal ward of mental institution, and such disposition may not be used as a substitute for laws dealing expressly with habitual criminals. *Id.*

#### 7. Constitutionality

District of Columbia statute requiring mandatory confinement of persons found not guilty by reason of insanity is constitutional. *J. L. Foller v. W. Overholser, Supt. etc.* (1961, 292 F. 2d 732, 110 U.S. App. D.C. 239).

#### 8.50 Defense of insanity

Defendant has burden of proving his defense of insanity. *United States v. J. A. Naples* (1961, 192 F. Supp. 23).

#### 10. Discretion of court

Under statute requiring appropriate certificate of superintendent of mental hospital as a condition precedent to release of person committed, court may not substitute its own judgment for that of superintendent and may not try the matter de novo in habeas corpus proceeding, but superintendent's action or failure to act may not be deemed final or conclusive for all purposes. *H. T. O'Beirne v. W. Overholser* (1961, 193 F. Supp. 652).

Court may step in to determine whether action or failure to act on part of superintendent of mental hospital is arbitrary and capricious. *Id.*

#### 10.50 Due process

To require defendant to assume burden of proof on issue of insanity does not violate due process. *United States v. J. A. Naples* (1961, 192 F. Supp. 23).

#### 13. Habeas corpus

Evidence disclosed that petitioner seeking habeas corpus was receiving psychiatric treatment during his confinement in hospital following acquittal by reason of insanity. *J. L. Foller v. Overholser, Sup't etc.* (1961, 292 F. 2d 732, 110 U.S. App. D.C. 239).

Evidence disclosed that director of hospital, to which petitioner had been committed following his acquittal by reason of insanity, was not arbitrary in refusing discharge. *Id.*

#### 20. Potentially dangerous

Under rule that to be eligible for release from mental hospital, inmate must be free from such "abnormal mental conditions" as would make him dangerous to himself or community in reasonably foreseeable future, quoted words refer to a mental disease or mental defect, and not just any condition that is outside of the ordinary norm. *H. T. O'Beirne v. W. Overholser* (1961, 193 F. Supp. 652).

#### 20.50 Prejudicial cross-examination

In murder prosecution wherein sole defense was insanity, and defendant's gibberish testimony was such as to raise issues as to whether defendant feigned such testimony and whether at time of the third trial his mental condition represented his condition at time of act charged, cross-examination disclosing defendant's failure to take stand at two previous trials which resulted in convictions was erroneous and was not harmless but was sufficiently prejudicial to warrant the granting of a mistrial even though defense made no request for cautionary instructions. *W. L. Stewart v. United States* (1961, 366 U.S. 1, 81 S. Ct. 941; reversing 275 F. 2d 617).

#### 23.50 Psychiatrist's report

Psychiatrist's reports on whether defendant was mentally competent to stand trial properly included evaluation of defendant's mental condition at time crimes were committed. *W. Overholser, Sup't. etc. v. F. C. Lynch* (1961, 288 F. 2d 388, 109 U.S. App. D.C. 404).

#### 24. Public policy

That personal liberty should depend on such an arbitrary circumstance as mental hospital's change of "administrative policy" in determining whether sociopathic personality should be treated as a mental disease, as affecting release of committed person, would be contrary to basic principles of freedom. *H. T. O'Beirne v. W. Overholser* (1961, 193 F. Supp. 652).





## PART V

# GENERAL STATUTES

### TITLE 25.—ALCOHOLIC BEVERAGES

#### Chapter 1.—ALCOHOLIC BEVERAGE CONTROL

##### § 25-103. Definitions.

###### NOTES TO DECISIONS

##### 5. Regulations, validity of

Under District of Columbia statute imposing a tax on all beer sold and prescribing monthly reports of beer "sold by him during the preceding calendar month", regulations of the Commissioners taxing beer in warehouse and before it is sold were not authorized. *American Sales Co. v. District of Columbia* (1961, 292 F. 2d 751, 110 U.S. App. D.C. 258).

##### § 25-107. Powers of Commissioners—Rules and regulations—Licenses.

The Commissioners are hereby authorized to prescribe such rules and regulations not inconsistent with this chapter as they may deem necessary to carry out the purposes thereof and to control and regulate the manufacture, sale, keeping for sale, offer for sale, solicitation of orders for sale, importation, exportation, and transportation of alcoholic beverages in the District of Columbia for the protection of the public health, comfort, safety, and morals, and the Commissioners are further authorized to prescribe such rules and regulations not inconsistent with this chapter as they may deem necessary to properly and adequately control the consumption of alcoholic beverages on premises licensed under paragraph (1) of section 25-111, with specific authority to prescribe the hours during which alcoholic beverages may be consumed on such premises.

The Commissioners shall have specific authority to make rules and regulations for the issuance, transfer, and revocation of licenses; to facilitate and insure the collection of taxes; to govern the operation of the business of licensees, with full power and authority to prescribe the terms and conditions under which alcoholic beverages may be sold by each class of licensees; to forbid the issuance of licenses for manufacture, sale, or storage of alcoholic beverages in such localities in, and such sections and portions of, the District of Columbia as they may deem proper in the public interest; to limit the number of licenses of each class to be issued in the District of Columbia and to limit the number of licenses of each class in any locality in, or sections or portions of the District of Columbia as they may deem proper in the public interest; to forbid the issuance of licenses for businesses conducted on such premises as they, in the public interest, may deem inappropriate; to forbid the issuance of any class or classes of licenses for businesses established subsequent to January 24, 1934, near or around schools, colleges,

universities, churches, or public institutions, to prescribe the hours during which beverages may be sold and to forbid the sale on Sundays; but the Commissioners shall not authorize the sale by any licensee, other than the holder of a retailer's license, class E, of any beverages on Sundays other than light wines and beer, and any such sale is hereby prohibited. Notwithstanding any other provision of this chapter, the Commissioners shall not authorize the sale by any licensee, other than the holder of a retailer's license, class E, of any beverages on the day of the presidential election in the District of Columbia during the hours when the polls are open, and any such sales are hereby prohibited.

The powers and authorities expressly enumerated are to be construed as in addition to, and not by way of limitation of, the general powers herein granted. Different regulations may be prescribed for the different classes of licenses, for the different classes of beverages, and for different localities in or sections or portions of the District of Columbia.

Any regulations promulgated hereunder shall become effective five days after being published in any daily newspaper of general circulation in the District of Columbia. Such regulations may be altered or amended from time to time as the Commissioners may deem desirable. The Commissioners shall also have authority in any time of public emergency, without previous notice of advertisement, to prohibit the sale of any or all beverages during the period of such emergency. (Jan. 24, 1934, 48 Stat. 322, ch. 4, § 7; June 29, 1953, 67 Stat. 102, ch. 159, § 404(a); Oct. 4, 1961, 75 Stat. 820, Pub. L. 87-389, § 3.)

###### AMENDMENTS

1961—Section 3, act Oct. 4, 1961, amended the second paragraph by inserting at the end of the first sentence the following new sentence: "Notwithstanding any other provision of this chapter, the Commissioners shall not authorize the sale by any licensee, other than the holder of a retailer's license, class E, of any beverages on the day of the presidential election in the District of Columbia during the hours when the polls are open, and any such sales are hereby prohibited."

1953—Act June 29, 1953, amended section by adding after the word "morals" in the first paragraph the provision authorizing the Commissioners to prescribe rules and regulations necessary to control consumption of alcoholic beverages on licensed premises.

###### CROSS REFERENCES

District of Columbia Revenue Act of 1956, authority of Commissioners to make rules and regulations under, see § 47-1595a.

Other provisions for rules and regulations under this chapter, see §§ 25-106, 25-112, 25-115, 25-138.

Penalties for violations of chapter or rules and regulations, see §§ 25-118, 25-132.

Rules and regulations generally, see § 1-226.

## NOTES TO DECISIONS

Double jeopardy 1  
Regulations, validity of 2

## 1. Double jeopardy

Convictions for violations of this act and the Liquor Taxing Act of 1934, did not place defendant in double jeopardy, the evidence required in the two cases being different. *Sims v. Rives* (1936, 84 F. 2d 871, 66 App. D.C. 24, certiorari denied 56 S. Ct. 960, 298 U.S. 682, 80 L. Ed. 1402).

## 2. Regulations, validity of

Under District of Columbia statute imposing a tax on all beer sold and prescribing monthly reports of beer "sold by him during the preceding calendar month", regulation of the Commissioners taxing beer in warehouse and before it is sold were not authorized. *American Sales Co. v. District of Columbia* (1961, 292 F. 2d 751, 110 U.S. App. D.C. 258).

## § 25-109. Sale without license prohibited—Exceptions.

## NOTES TO DECISIONS

## 5.50. Evidence sufficiency

Evidence was sufficient to sustain convictions of keeping for sale and selling alcoholic beverages without a license. *G. Williams & S. Stokes v. District of Columbia* (D.C. Mun. App. 1961, 167 A. 2d 893).

## § 25-124. Beverage taxes—Method of collection—Class C or D licensees—Reports.

\* \* \* \* \*

Former (c) repealed by act Sept. 14, 1961.

(c) [Former subsection (d) as amended:]

Said taxes shall be collected and paid in the following manner:

(1) Each holder of a manufacturer's or wholesaler's license shall, on or before the tenth day of each month, furnish to the Commissioners or their designated agent on a form to be prescribed by the Commissioners, a statement under oath showing the quantity of beverage subject to taxation hereunder sold by him during the preceding calendar month and shall, on or before the fifteenth day of each month, pay to the Commissioners or their designated agent the tax hereby imposed upon the quantity of beverages subject to taxation hereunder sold by him during the preceding calendar month.

(2) No licensee holding a retailer's license shall transport or cause to be transported into the District of Columbia any beverages subject to taxation hereunder other than the regular stock on hand in a passenger carrying marine vessel operating in and beyond the District of Columbia, or a club car or a dining car on a railroad operating in and beyond the District of Columbia, for which a retailer's license, class C or D, has been issued under this chapter, unless such licensee has first obtained a permit so to do from the Alcoholic Beverage Control Board. No such permit shall issue until the tax imposed by this section shall have been paid for the beverages for which the permit is requested. Such permit shall specifically set forth the quantity, character, and brand or trade name of the beverage to be transported and the names and addresses of the seller and of the purchaser. Such permit shall accompany such beverages during transportation in the District of Columbia to the licensed premises of such retail licensee and shall be exhibited upon the demand of any police officer or duly authorized inspector of the Board. Such permit shall, immedi-

ately upon receipt of the beverage by the retail licensee, be marked "canceled" and retained by him.

(3) The Commissioners are authorized and empowered to prescribe by regulation such other methods or devices or both for the assessment, evidencing of payment, and collection of the taxes imposed by this section in addition to or in lieu of the method hereinbefore set forth whenever in their judgment such action is necessary to prevent frauds or evasions.

(d) [Former subsection (g).]

(e) [Former subsection (h).] [Former subsection (e) repealed by act Sept. 14, 1961.]

(f) [Former subsection (k) as amended:] [Former subsection (f) repealed by act Sept. 14, 1961.]

No taxing provision of this section shall apply in the case of a passenger-carrying marine vessel operating in and beyond the District of Columbia, or a club car or a dining car on a railroad operating in and beyond the District of Columbia, for which a retailer's license, class C or D, has been issued under this chapter, except as set forth in this subsection.

The tax as specified in subsection (a) of this section shall be paid on all such beverages as are sold and served by said licensee while passing through or when at rest in the District of Columbia, in the following manner: A record shall be made and kept by the licensee for each passenger-carrying marine vessel operating in and beyond the District of Columbia, and for each club car or dining car on a railroad operating in and beyond the District of Columbia, for which a retailer's license, class C or class D, has been issued under this chapter, of all alcoholic beverages sold and served in the District of Columbia, which record shall be subject to inspection by the board. Each holder of such a license shall, on or before the tenth day of each month, forward to the Board on a form to be prescribed by the Commissioners, a statement under oath, showing the quantity of each kind of beverage, except beer and wines, sold under such license in the District of Columbia during the preceding calendar month and such statement shall be accompanied by payment of any tax imposed under this chapter upon any such beverages set forth in said report.

(g) The Commissioners are authorized to require that the immediate container of each beverage subject to tax under this chapter contain the license number of each licensee who sells or offers for sale such beverage. Such license number must be affixed at the time of display or sale of said spirits by the retailer. This subsection shall not apply to spirit containers of less than two ounces.

[Former subsections (g) and (h) renumbered as (d) and (e); (i) and (j) repealed by act Sept. 14, 1961, and former (k) renumbered as (f) by same act.]

(Jan. 24, 1934, 48 Stat. 332, ch. 4, § 23; Apr. 30, 1934, 48 Stat. 654, ch. 181, § 3; June 18, 1934, 48 Stat. 1014, 1015, ch. 600, §§ 1, 2; Aug. 27, 1935, 49 Stat. 901, 903, ch. 756, §§ 11, 17; June 25, 1936, 49 Stat. 1921, ch. 804; June 25, 1948, 62 Stat. 991, ch. 646, § 32(b); May 24, 1949, 63 Stat. 107, ch.



139, § 127; May 27, 1949, 63 Stat. 135, ch. 146, title V, § 505; May 18, 1954, 68 Stat. 113, ch. 218, § 801; Mar. 31, 1956, 70 Stat. 81, 82, ch. 154, §§ 301, 302(a); July 25, 1958, 72 Stat. 418, 419, Pub. L. 85-558, §§ 1—7; Sept. 14, 1961, 75 Stat. 510, 511, Pub. L. 87-238, §§ 1—5.)

#### AMENDMENTS

1961—Subsection (c) repealed by act Sept. 14, 1961, § 1. See main volume for provisions of subsection.

Subsection (d) renumbered as (c) by section 2 of same act, and amended to read as above set out. For provisions of former subsection (d) see main volume.

Subsections (e), (f), (i), and (j) were repealed and subsections (g) and (h) were renumbered as (d) and (e) by section 3 of the same act. For the provisions of the repealed subsections, see main volume.

Subsection (k) was renumbered as (f) and amended to read as above set out, by section 4 of the same act. See original subsection (k) in main volume.

Subsection (g) was added by section 5 of the act. Sections 6, 7, 8, and 9 of the act made enactments which are set out as notes hereunder.

#### EFFECTIVE DATE OF 1961 AMENDMENT

Section 9 of act Sept. 14, 1961, provided that: "This Act [making amendments, repeals, and changes set out under 1961 Amendment note] shall take effect on the first day of the calendar month beginning not less than sixty days after the date of approval of this Act [Sept. 14, 1961]."

#### CONSTRUCTION OF ACT SEPT. 14, 1961, AND DECLARATION OF AUTHORITY

Section 6 of act Sept. 14, 1961, provided that:

"Nothing in this Act [repealing subsection (c) renumbering subsection (d) as subsection (c) and amending same to read as above set out; repealing subsections (e), (f), (i), and (j); renumbering (g) and (h) as (d) and (e) and renumbering (k) as (f) and amending same to read as above set out and adding subsection (g)] shall be construed as requiring the payment of any further tax on beverages to which stamps have been lawfully affixed under provisions of prior law."

Section 8 of said act provided that:

"Nothing in this Act [making the repeals, amendments and renumberings above set out] shall be construed so as to affect the authority vested in the Board of Commissioners of the District of Columbia by Reorganization Plan Numbered 5 of 1952 (66 Stat. 824). The performance of any function vested by this Act in the Board of Commissioners or in any office or agency under the jurisdiction and control of said Board of Commissioners may be delegated by said Board of Commissioners in accordance with section 3 of such plan."

#### REDEMPTION OF UNUSED STAMPS

Section 7 of act Sept. 14, 1961, provided that:

"The Commissioners or their designated agent are authorized to redeem any unused stamps issued under the provisions of prior law or to accept same in payment of tax shown due on a monthly return."

§ 25-129. Search warrants for illegal alcoholic beverages—Penalty for resisting officer—Disposition of illegal beverages—Payment of bona fide liens.

#### NOTES TO DECISIONS

##### .50. Applications for search warrant

A lapse of four days between time police officers observed illegal activities on premises and time police department made application for search warrant based on policeman's affidavit describing sale of alcoholic beverages on premises without a license was not, under the circumstances, unreasonable as a matter of law. *G. Williams & S. Stokes v. District of Columbia* (D.C. Mun. App. 1961, 167 A. 2d 893).

##### § 25-138. Tax on beer.

#### NOTES TO DECISIONS

##### 1. Regulations, validity of

Under District of Columbia statute imposing a tax on all beer sold and prescribing monthly reports of beer "sold by him during the preceding calendar month", regulation of the Commissioners taxing beer in warehouse and before it is sold were not authorized. *American Sales Co. v. District of Columbia* (1961, 292 F. 2d 751, 110 U.S. App. D.C. 258).



## TITLE 28.—COMMERCIAL INSTRUMENTS AND TRANSACTIONS

### Chapter 3.—NEGOTIATION

#### § 28-301. Definition—Bearer instrument—Order instrument.

##### NOTES TO DECISIONS

##### 1.50. Holder in due course

Corporation was a holder in due course of note secured by trust deed notwithstanding corporation agreed to purchase note and sent its check therefor to title company prior to execution of note, where actual purchase did not occur until note had been executed by defendants and endorsed by payee, and hence defenses of fraudulent representations as to condition of house for which trust deed was executed were not available. *A. M. Latney & J. L. Latney v. S. Oshinsky* (D.C. Mun. App. 1961, 169 A. 2d 687).

### Chapter 4.—RIGHTS OF HOLDER

#### § 28-402. "Holder in due course" defined.

##### NOTES TO DECISIONS

##### 8.50. Holder in due course

Corporation was a holder in due course of note secured by trust deed notwithstanding corporation agreed to pur-

chase note and sent its check therefor to title company prior to execution of note, where actual purchase did not occur until note had been executed by defendants and endorsed by payee, and hence defenses of fraudulent representations as to condition of house for which trust deed was executed were not available. *A. M. Latney & J. L. Latney v. S. Oshinsky* (D.C. Mun. App. 1961, 169 A. 2d 687).

### Chapter 11.—UNIFORM SALES—FORMATION OF CONTRACT

#### § 28-1115. Implied warranties of quality or fitness—Effect of express warranty.

##### NOTES TO DECISIONS

##### 3.50. Conflict of express and implied warranties

An express warranty giving a discount on replacement and installation of parts in a used automobile would not of itself be deemed to conflict with implied warranty of fitness of automobile. *A. Green v. Northeast Motor Company* (D.C. Mun. App. 1961, 166 A. 2d 923).

Provision that buyer understood there were no warranties except as provided in contract for sale of automobile did not preclude evidence of implied warranty of fitness. *Id.*





## TITLE 29.—CORPORATIONS

### Chapter 8.—COOPERATIVE ASSOCIATIONS

#### § 29-818. Directors.

##### 1. Validity of by-laws

Incorporated cooperative association's by-law providing that board of directors' selection of counsel shall be subject to approval of membership violated statute, and such by-law did not preclude counsel from recovering for services rendered under contract approved by the board. *Capitol Cab Cooperative Ass'n Inc. v. W. C. Darden* (D.C. Mun. App. 1961, 169 A. 2d 463; see also, same case, 154 A. 2d 352).

#### § 29-821. Referendum on acts of directors.

##### NOTES TO DECISIONS

##### 1. Validity of by-laws

Incorporated cooperative association's by-law providing that board of directors' selection of counsel shall be subject to approval of membership violated statute, and such by-law did not preclude counsel from recovering for services rendered under contract approved by board. *Capitol Cab Cooperative Ass'n Inc. v. W. C. Darden* (D.C. Mun. App. 1961, 169 A. 2d 463; see also, same case, 154 A. 2d 352).

### Chapter 9.—BUSINESS CORPORATIONS (1954)

#### § 29-902. Definitions.

##### NOTES TO DECISIONS

##### 1. Insolvency

In action by judgment creditor of corporation to impress a constructive trust on property conveyed by corp-

oration to defendant officer and majority shareholder, evidence supported finding of financial incapacity of the corporation at the time of the conveyance. *L. N. Tauber v. M. Noble* (D.C. Mun. App. 1961, 172 A. 2d 552).

#### § 29-929. Sale, lease, exchange, or mortgage of assets other than in usual and regular course of business.

##### NOTES TO DECISIONS

##### 1. Assets, disposition of

Corporation's transfer of its major league baseball franchise from one location to another was not such disposition of assets as required approval of two-thirds of stockholders, under District of Columbia Law. *H. G. Murphy v. Washington American Baseball Club, Inc., et al.* (1961, 293 F. 2d 522, 110 U.S. App. D.C. 334).

#### § 29-933i. Service of process on foreign corporation.

##### NOTES TO DECISIONS

##### 1. Service on Commissioners

Service was quashed and complaint dismissed in treble damage action against foreign corporation under Clayton Act where plaintiff failed to establish that it had complied with statutory requirement of delivering to and leaving with the Commissioners of District of Columbia, or with any clerk having charge of their office, copies of process. *Curtis Brothers, Inc. v. Thomasville Chair Co.* (1961, 292 F. 2d 774, 110 U.S. App. D.C. 281).





## TITLE 30.—DOMESTIC RELATIONS

### Chapter 1.—MARRIAGE

#### § 30-101. Prohibitions—Marriages void ab initio.

##### 6. Laches and estoppel

Annulment action was not barred by laches, where evidence supported allegation of complaint that plaintiff did not learn of invalidity of divorce from prior wife until immediately before filing complaint. *M. G. Sears v. J. C. Sears* (1961, 293 F. 2d 884, 110 U.S. App. D.C. 407).

Court of equity, in determining whether to interpose bar of equitable estoppel in action to annul marriage, must consider all factors of case, parties involved, effect of ultimate decision on third parties not before court, nature of rights sought to be vindicated, and public policy. *Id.*

Husband, who obtained mail-order Mexican divorce from first wife, married second wife, and lived with second wife for fifteen years, was estopped in his annulment action against second wife, to deny validity of marriage to second wife. *Id.*

#### § 30-104. Annulment—Party plaintiff—Next friend—Capable person who knowingly contracted illegal marriage.

Laches and estoppel 2  
Capable of contracting marriage 6

##### 2. Laches and estoppel

Husband, who obtained mail-order Mexican divorce from first wife, married second wife, and lived with second wife for fifteen years, was estopped in his annulment action against second wife to deny validity of marriage to second wife. *M. G. Sears v. J. C. Sears* (1961, 293 F. 2d 884, 110 U.S. App. D.C. 407).

##### 6. Capable of contracting marriage

In statute providing that no annulment proceedings can be instituted by person who, being "fully capable of contracting a marriage," has knowingly and willfully contracted any marriage declared illegal by statutes, quoted phrase refers to person with intrinsic legal capacity and does not allude to extrinsic impediments to valid marriage. *M. G. Sears v. J. C. Sears* (1961, 293 F. 2d 884, 110 U.S. App. D.C. 407).

### Chapter 2.—PROPERTY RIGHTS

#### § 30-201. Married women—Power to dispose of separate property—Under 21 years of age.

##### AMENDMENTS

1961—Act Sept. 14, 1961, 75 Stat. 517, Pub. L. 87-246, § 6, amended this section by striking out the words "of subsection (b)". This amendment was made to conform the section to the provisions of § 18-201a, which was amended by the same act eliminating subsection (b).

##### EFFECTIVE DATE OF 1961 AMENDMENT

Section 8 of act Sept. 14, 1961, provided that: "The foregoing provisions of this Act [amending sections 18-101, 18-201a, 18-204, 18-211 and 30-201] shall become effective six months after the date of enactment of this Act."

##### POPULAR NAME

Section 1 of act Sept. 14, 1961, provided: "That this Act (amending sections 18-101, 18-201a, 18-211, 18-204 and 30-201) may be cited as the 'Marital Property Rights Amendments of 1961.'"

##### CROSS REFERENCE

Dower rights of husband and wife, see § 18-201a.



## TITLE 32.—ELEEMOSYNARY, CURATIVE, CORRECTIONAL AND PENAL INSTITUTIONS

### Chapter 3.—HOSPITALS AND ASYLUMS—GENERAL PROVISIONS

§§ 32-317, 32-318, 32-319, 32-320. Omitted.

#### CODIFICATION

These sections dealing with Freedmen's Hospital, are omitted by reason of the provisions of act Sept. 21, 1961, 75 Stat. 542, Pub. L. 87-267 (hereinafter set out in full) transferring the hospital to Howard University. Section 7 of the act repeals all laws specifically applicable to Freedmen's Hospital, effective with the transfer of the Hospital pursuant to section 1 of the act.

#### ACT SEPT. 21, 1961, TRANSFERRING FREEDMEN'S HOSPITAL TO HOWARD UNIVERSITY

##### TRANSFER OF FREEDMEN'S HOSPITAL

SECTION 1. (a) For the purpose of assisting in the provision of teaching hospital resources for Howard University, thereby assisting the university in the training of medical and allied personnel and in providing hospital services for the community, the Secretary of Health, Education, and Welfare shall, pursuant to agreement with the board of trustees of Howard University, transfer to Howard University, without reimbursement, all right, title, and interest of the United States in certain lands in the District of Columbia, together with the buildings and improvements thereon, and the personal property used in connection therewith (as determined by the Secretary), commonly known as Freedmen's Hospital.

(b) It is the intent of Congress (1) that the transfer of Freedmen's Hospital to Howard University be effected as soon as practicable, (2) to assure the well-being of patients at Freedmen's Hospital during the period of transition, and (3) that the transfer be effected with minimum dislocation of the present hospital staff and maximum consideration of their interests as employees.

(c) The Secretary of Health, Education, and Welfare shall report to the Congress the terms of the agreement for such transfer.

##### PROVISION FOR EMPLOYEES OF HOSPITAL

SEC. 2. (a) The agreement for transfer of Freedmen's Hospital referred to in section 1 shall include provisions to assure that—

(1) all individuals who are career or career-conditional employees of the hospital on the day preceding the effective date of the transfer of the hospital, except those in positions with respect to which they have been notified not less than six months prior to the effective date of such transfer that their positions are to be abolished, will be offered an opportunity to transfer to Howard University;

(2) Howard University—

(A) will not reduce the salary levels for such employees who transfer,

(B) will deposit currently (i) in the civil service retirement and disability fund created by the Act of May 22, 1920, the employee deductions and agency contributions required by the Civil Service Retirement Act, and (ii), in the fund created by section 5(c) of the Federal Employees' Group Life Insurance Act of 1954 the employee deductions and agency contributions required by the Federal Employees' Group Life Insurance Act of 1954,

(C) will provide other benefits for such employees as nearly equivalent as may be practicable to those generally applicable, on the effective date of the transfer of the hospital, to civilian employees of the United States, and

(D) in determining the seniority rights of its employees, Howard University will credit service with Freedmen's Hospital performed by such employees who transfer, on the same basis as it would credit such service had it been performed for such University;

(3) the transfer will become effective not later than the beginning of the second month which begins after construction of the new hospital facilities authorized by section 3 is commenced.

(b) The Department of Health, Education, and Welfare shall make every reasonable effort to place in other comparable Federal positions all individuals who are career or career-conditional employees of Freedmen's Hospital on the date of enactment of this Act and who do not transfer to Howard University.

(c) Each individual who is an employee of Freedmen's Hospital on the date of enactment of this Act and who transfers to Howard University shall, so long as he is continuously in the employ of Howard University, be regarded as continuing in the employ of the United States for the purposes of the Civil Service Retirement Act, the Federal Employees' Group Life Insurance Act of 1954. For purposes of section 3121(b) of the Internal Revenue Code of 1954 and section 210 of the Social Security Act, service performed by such individual during the period of his employment at Howard University shall be regarded as though performed in the employ of the United States.

##### AUTHORIZATION OF CONSTRUCTION OF HOSPITAL FACILITIES

SEC. 3. For the purpose specified in section 1, there are hereby authorized to be appropriated such sums as may be necessary for the construction of a building or buildings and facilities, including equipment, and for remodeling of existing buildings (including repair and replacement of equipment) which are to be combined with the building or buildings and facilities so constructed, to provide a hospital with a capacity of not to exceed five hundred beds.

##### CONTINUED OPERATION OF FACILITIES

SEC. 4. If, within twenty years after the completion of construction (as determined by the Secretary of Health, Education, and Welfare) of the new hospital facilities authorized by section 3, any of such facilities, or of the facilities transferred pursuant to section 1 and combined with such new facilities, are transferred by Howard University to any other person or entity (except a transfer to the United States) or cease to be operated by the university as teaching hospital facilities, the United States shall be entitled to recover from the transferee or the university, in the case of a transfer, or from the university, if there is no transfer, an amount equal to the then value of such facilities (or so much thereof as is involved in the transfer, as the case may be), such value to be determined by agreement of the parties or by action brought in the United States District Court for the District of Columbia.

##### AUTHORIZATION OF APPROPRIATIONS FOR OPERATION

SEC. 5. In order to facilitate operation of teaching hospital facilities at Howard University, there are authorized to be appropriated annually to the university such sums as the Congress may determine, for the partial support of the operation of such facilities giving consideration to the cost imposed by the provisions of section 2 and the portion of the agreement under this Act relating to such provisions. The cost of operating such facilities, the appropriations pursuant to this section, and any other income derived from such operation or avail-



able for such purpose shall be identified and accounted for separately in the accounts of the university.

#### FINANCIAL POLICY

SEC. 6. It is hereby declared to be the policy of the Congress that, to the extent consistent with good medical teaching practice, the Howard University Hospital facilities shall become progressively more self-supporting. In order to further this policy, the President shall submit to the Congress a report, based on a study of the financing of the operation of the hospital, containing his recommendations on the rate at which, consistent with the above policy, Federal financial participation in such cost of operation shall be reduced. Such report shall be submitted not later than the end of the second calendar year following the year in which the construction of the new hospital facilities, authorized by section 3, is completed.

#### REPEAL OF LAWS

SEC. 7. All laws heretofore applicable specifically to Freedmen's Hospital are, to the extent of such applicability, repealed, effective with the transfer of Freedmen's Hospital pursuant to section 1.

#### TRANSFER OF FUNDS

SEC. 8. All unexpended balances of appropriations, allocations, and other funds, available or to be made available, of Freedmen's Hospital are, effective with the transfer of Freedmen's Hospital pursuant to section 1, transferred to Howard University for use in the operation of the Howard University Hospital facilities, except to the extent (determined by the Director of the Bureau of the Budget) required to meet obligations already incurred and not assumed by the university.

(Sept. 21, 1961, 75 Stat. 542, Pub. L. 87-267, §§ 1—8.)

### Chapter 4.—SAINT ELIZABETHS HOSPITAL

§ 32-404. Reimbursements on account of expenditures for care of insane to be credited to the District of Columbia.

#### NOTES TO DECISIONS

##### 1. District not a voluntary creditor

District of Columbia was entitled to reimbursement for expenses of treatment of incompetent veteran from committee of the veteran from date of her appointment until the veteran was transferred to the rolls of the Veterans Administration which now bears the costs involved, since the District was not a voluntary "creditor" within the statute exempting from claims of "creditors" payments of benefits due or to become due under any law administered by the Veterans Administration. *T. Savoid, Committee etc. v. District of Columbia* (1961, 288 F. 2d 851, 110 U.S. App. D.C. 39).

§ 32-417f. Persons entitled to care in a Veterans' Administration facility.

#### NOTES TO DECISIONS

##### 1. District not a voluntary creditor

District of Columbia was entitled to reimbursement for expenses of treatment of incompetent veteran from committee of the veteran from date of her appointment until the veteran was transferred to the rolls of the Veterans Administration which now bears the costs involved, since the District was not a voluntary "creditor" within the statute exempting from claims of "creditors" payments of benefits due or to become due under any law administered by the Veterans Administration. *T. Savoid, Committee etc. v. District of Columbia* (1961, 288 F. 2d 851, 110 U.S. App. D.C. 39).

## TITLE 33.—FOOD AND DRUGS

### Chapter 1.—ADULTERATION

§ 33-111. Special services for detection of adulteration.

CONTINUATION OF ACT APR. 8, 1960

Section continued by provisions of section 15 of act  
Sept. 21, 1961, 75 Stat. 564, Pub. L. 87-265. See note to  
section 9-501.

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## TITLE 35.—INSURANCE

### Chapter 2.—PROVISIONS APPLICABLE TO MORE THAN ONE KIND OF INSURANCE

§ 35-202. Health, accident, and life insurance companies defined—Assets and capital stock required—Amount of policies—Taxation—Reports to Superintendent of Insurance—Examination by Superintendent of Insurance—Appeal to Commissioners—Fraternal beneficial and certain other organizations exempt.

#### NOTES TO DECISIONS

##### 1. Benefit order

The 1940 act requiring that all fire, marine and casualty companies doing business in District of Columbia must obtain certificate of authority expressly repealed earlier statute exempting nonprofit relief associations composed of government employees from licensing and regulation, and consequently unincorporated nonprofit labor organization composed exclusively of postal clerks employed by United States Post Office Department must obtain from Superintendent of Insurance certificate of authority to operate program of health insurance. *National Federation of Post Office Clerks, etc. v. District of Columbia* (D.C. Mun. App. 1961, 173 A. 2d 483).

### Chapter 4.—DEPARTMENT OF INSURANCE WITH RESPECT TO LIFE COMPANIES

§ 35-404. Certificate of authority—Investigation of Qualifications—Effect—Issuance.

#### NOTES TO DECISIONS

Jurisdiction 1  
License requirements 2  
Superintendent's authority 3  
Trial de novo 4

##### 1. Jurisdiction

The United States District Court for District of Columbia, as local court of general jurisdiction, had jurisdiction without express statutory authorization to review administrative action by trial de novo. *A. F. Jordan, Sup't of Insurance etc. v. United Insurance Co. of America* (1961, 288 F. 2d 778, 110 U.S. App. D.C. 112).

##### 2. License requirements

Insurer who seeks licenses under the Life Insurance Act and the Fire and Casualty Act bears responsibility of satisfying the more stringent requirement regardless of which statute prescribes it, and if two certificates are issued, each must stand on its own feet. *Travelers Insurance Co. v. A. F. Jordan, Dep't of Insurance etc.* (1961, 287 F. 2d 347, 109 U.S. App. D.C. 308).

Life Insurance Act of District of Columbia and Fire and Casualty Act do not prohibit issuance of certificate or certificates authorizing a single insurer to do both life and casualty insurance business. *Id.*

##### 3. Superintendent's authority

Statute authorizing District of Columbia Superintendent of Insurance, upon satisfying himself by such investigation as he may deem proper or necessary, to refuse to issue or renew certificate, does not authorize superintendent to hold hearing, and grant of hearing by him on question of renewal of certificate was gratuitous. *A. F. Jordan, Sup't of Insurance etc. v. United Insurance Co. of America* (1961, 289 F. 2d 778, 110 U.S. App. D.C. 112).

##### 4. Trial de novo

It was proper for District Court to grant trial de novo, rather than merely reviewing administrative record, in insurer's action against District of Columbia Superintendent of Insurance to set aside ruling denying renewal of certificate of authority, where statutes did not

provide for administrative hearing, notwithstanding fact that superintendent had granted one. *A. F. Jordan, Sup't of Insurance etc. v. United Insurance Co. of America* (1961, 289 F. 2d 778, 110 U.S. App. D.C. 112).

§ 35-414. False statements in application for insurance.

#### NOTES TO DECISIONS

Misrepresentation by beneficiary 6.50  
Test of materiality 9.50

##### 6.50 Misrepresentation by beneficiary

Misrepresentation by beneficiary, in his application for a life policy on his month-old daughter of fact that he had applied to another insurer for a similar policy, even if participated in by insurer's agent, was material and constituted a valid defense to recovery on the policy. *R. L. Jannenga v. National Life Ins. Co.* (1961, 288 F. 2d 169, 109 U.S. App. D.C. 385).

##### 9.50 Test of materiality

Test of materiality of a statement in an insurance application is whether the representation would reasonably influence insurer's decision as to whether it should insure. *R. L. Jannenga v. Nationwide Life Ins. Co.* (1961, 288 F. 2d 169, 109 U.S. App. D.C. 385).

§ 35-425. General agent, agent, solicitor—License required—Application—Contents—Applicant vouched for by company—Placement of excess or rejected risks—Expiration and renewal of license—Officers and traveling salaried employees excepted—Notice of termination of employment—Information privileged.

#### NOTES TO DECISIONS

Predication of indictment 1  
Propriety of regulation 2  
Sufficiency of indictment 3

##### 1. Predication of indictment

A perjury indictment could not be grounded upon a knowingly false answer to a question placed by superintendent of insurance, in an application for a license to act as an insurance solicitor. *C. S. Nelson v. United States* (1961, 288 F. 2d 376, 109 U.S. App. D.C. 392).

##### 2. Propriety of regulation

Superintendent of insurance does not have power to promulgate regulations, and was not authorized to make felonious even a knowingly false answer to a question which Congress had not made material. *C. S. Nelson v. United States* (1961, 288 F. 2d 376, 109 U.S. App. D.C. 392).

##### 3. Sufficiency of indictment

Indictment charging defendant generally in statutory language, with three counts of perjury, would be deemed sufficient, especially where record indicated that defendant had not been misled or prejudiced in his defense, and had not moved for a bill of particulars. *C. S. Nelson v. United States* (1961, 288 F. 2d 376, 109 U.S. App. D.C. 392).

§ 35-427. Appeal from rulings of superintendent—procedure—Costs and supersedeas bond—Liability of superintendent.

#### NOTES TO DECISIONS

##### 2. Jurisdiction

The United States District Court for District of Columbia, as local court of general jurisdiction, had jurisdiction without express statutory authorization to review administrative action by trial de novo. *A. F. Jordan, Sup't of Insurance etc. v. United Insurance Co. of America* (1961, 289 F. 2d 778, 110 U.S. App. D.C. 112).

## Chapter 5.—DOMESTIC LIFE COMPANIES

## § 35-535. Investment of funds of domestic companies.

\* \* \* \*

(10) (a) \* \* \*

(b) In addition to the investments authorized in paragraph (10) (a), common stocks of any insurance company (other than as prohibited in section 35-540) created under the laws of the United States, or by any State thereof, or the District of Columbia: *Provided, however,* That stocks may be acquired under this paragraph (10) (b) only (i) with the intention of ultimately acquiring ownership or control of the issuing corporation as an affiliate or a subsidiary, (ii) if such acquisition will not cause the acquiring company's aggregate cost of investments under this paragraph to exceed, in the case of a capital stock company, the amount of capital, surplus and contingency reserves in excess of \$150,000 or, in the case of a mutual company, the amount of surplus and contingency reserves in excess of \$150,000, and (iii) after the Superintendent of Insurance of the District of Columbia has been furnished with such information as he may require and has given to the acquiring company his written approval of the proposed acquisition stating his opinion that it will not substantially lessen competition, will not tend to create a monopoly in any line of insurance, and will not impair the financial stability of the acquiring company. (Sept. 14, 1961, 75 Stat. 514, Pub. L. 87-245, § 1.)

## AMENDMENT

1961—Act Sept. 14, 1961, amended subsection (10) by designating it as subsection (10) (a) and by adding a new par. to said subsection designated as (10) (b).

## Chapter 7.—PROVISIONS RELATING TO ALL LIFE INSURANCE COMPANIES

## § 35-710. Group life insurance.

\* \* \* \*

(8) A policy of group life insurance issued to a credit union organized pursuant to the laws of the District of Columbia or pursuant to the Federal Credit Union Act, which credit union shall be deemed the policyholder, to insure members of the credit union for the benefit of persons other than the credit union, subject to the following requirements:

(a) The members eligible for insurance under the policy shall be all of the members of the credit union, or all of any class or classes thereof determined by age, or by membership in the credit union, or both.

(b) The premium for the policy shall be paid by the policyholder, either from the credit union's own funds, or from charges collected from the insured members specifically for the insurance, or both. A policy on which part of the premium is to be derived from funds contributed by the insured members specifically for their insurance may be placed in force only if at least 75 per centum of the then eligible members, excluding any as to whom evidence of individual insurability is not satisfactory to the insurer, elect to make the required contributions. A policy on which no part of the premium is to be derived from funds contributed by the insured members specifically for their insurance must insure all eligible members, or all except any as to whom

evidence of individual insurability is not satisfactory to the insurer.

(c) The policy must cover at least twenty-five members at date of issue.

(d) The amount of insurance on the life of any member shall not exceed the total amount of his shares and deposits in the credit union or \$2,000, whichever is less. Such policy may be issued either in addition to, or in lieu of, a policy issued pursuant to section 35-710(2). (Sept. 14, 1961, 75 Stat. 519, Pub. L. 87-249, § 1.)

## REFERENCE IN TEXT

The Federal Credit Union Act, referred to in text, is set out as chapter 14, in title 12 of the United States Code.

## AMENDMENT

1961—Act Sept. 14, 1961, amended section by adding subsection 8 thereto, as above set out.

## Chapter 13.—FIRE, CASUALTY, AND MARINE INSURANCE

## § 35-1301. Short title.

## NOTES TO DECISIONS

## 1. Labor organization

The 1940 act requiring that all fire, marine, and casualty companies doing business in District of Columbia must obtain certificate of authority expressly repealed earlier statute exempting nonprofit relief associations composed of government employees from licensing and regulation, and consequently unincorporated nonprofit labor organization composed exclusively of postal clerks employed by United States Post Office Department must obtain from superintendent of insurance certificate of authority to operate program of health insurance. *National Federation of Post Office Clerks etc. v. District of Columbia* (D.C. Mun. App. 1961, 173 A. 2d 483).

## § 35-1302. Application of chapter—Life, title, fidelity, and surety companies and pension plans excepted.

## NOTES TO DECISIONS

## 1. Labor organization

The 1940 act requiring that all fire, marine and casualty companies doing business in District of Columbia must obtain certificate of authority expressly repealed earlier statute exempting nonprofit relief associations composed of government employees from licensing and regulation, and consequently unincorporated nonprofit labor organization composed exclusively of postal clerks employed by United States Post Office Department must obtain from superintendent of insurance certificate of authority to operate program of health insurance. *National Federation of Post Office Clerks etc. v. District of Columbia* (D.C. Mun. App. 1961, 173 A. 2d 483).

## § 35-1303. Definitions.

## NOTES TO DECISIONS

## 1. Labor organization

The 1940 act requiring that all fire, marine and casualty companies doing business in District of Columbia must obtain certificate of authority expressly repealed earlier statute exempting nonprofit relief associations composed of government employees from licensing and regulation, and consequently unincorporated nonprofit labor organization composed exclusively of postal clerks employed by United States Post Office Department must obtain from superintendent of insurance certificate of authority to operate program of health insurance. *National Federation of Post Office Clerks etc. v. District of Columbia* (D.C. Mun. App. 1961, 173 A. 2d 483).

## § 35-1305. Certificate of authority—Necessity for—Expiration—Requirements.

## NOTES TO DECISIONS

## 1. License requirements

Insurer who seeks licenses under the Life Insurance Act and the Fire and Casualty Act bears responsibility of



satisfying the more stringent requirement regardless of which statute prescribes it, and if two certificates are issued, each must stand on its own feet. *Travelers Insurance Co. v. A. F. Jordan, Dept. of Insurance etc.* (1961, 287 F.2d 347, 109 U.S. App. D.C. 308).

Life Insurance Act of District of Columbia and Fire and Casualty Act do not prohibit issuance of certificate or certificates authorizing a single insurer to do both life and casualty insurance business. *Id.*

**§ 35-1323. Foreign or alien companies, admission—Certificate of authority required.**

**NOTES TO DECISIONS**

**1. License requirements**

Insurer who seeks licenses under the Life Insurance Act and the Fire and Casualty Act bears responsibility of satisfying the more stringent requirement regardless of which statute prescribes it, and if two certificates are issued, each must stand on its own feet. *Travelers Insurance Co. v. A. F. Jordan, Dept. of Insurance etc.* (1961, 287 F.2d 347, 109 U.S. App. D.C. 308).

Life Insurance Act of District of Columbia and Fire and Casualty Act do not prohibit issuance of certificate or certificates authorizing a single insurer to do both life and casualty insurance business. *Id.*

**§ 35-1327. Process, service upon foreign or alien companies by service on Superintendent—Force and effect—Registered letter to company—Proof of service—Penalty for failure to designate attorney for service of process.**

**NOTES TO DECISIONS**

**1. Doing business**

Activity of insurer, not licensed to do business in the District of Columbia, in issuing policy to resident of

district, who entered into contract in district, was sufficient "doing business" to authorize substituted service on Superintendent of Insurance in insured's subsequent action against insurer, and such service was valid. *United States Liability Ins. Co. v. A. Handy* (D.C. Mun. App. 1961, 173 A.2d 208).

**§ 35-1339. Renewal of licenses—Written notice of refusal to renew—Hearing—Application to court for leave to continue business pending appeal.**

**NOTES TO DECISIONS**

**.50. License requirements**

Insurer who seeks licenses under the Life Insurance Act and the Fire and Casualty Act bears responsibility of satisfying the more stringent requirement regardless of which statute prescribes it, and if two certificates are issued, each must stand on its own feet. *Travelers Insurance Co. v. A. F. Jordan, Dept. of Insurance etc.* (1961, 287 F.2d 347, 109 U.S. App. D.C. 308).

Life Insurance Act of District of Columbia and Fire and Casualty Act do not prohibit issuance of certificate or certificates authorizing a single insurer to do both life and casualty insurance business. *Id.*

**§ 35-1340. Revocation and suspension of licenses—Grounds for—Notice and hearing—Evidence.**

**NOTES TO DECISIONS**

**1. Jurisdiction**

The United States District Court for District of Columbia, as local court of general jurisdiction, had jurisdiction without express statutory authorization to review administrative action by trial de novo. *A. F. Jordan, Supt. of Insurance etc. v. United Insurance Co. of America* (1961, 289 F.2d 778, 110 U.S. App. D.C. 112).





## TITLE 36.—LABOR

### Chapter 5.—WORKMEN'S COMPENSATION

#### § 36-501. Longshoremen's and Harbor Workers' Compensation Act made applicable to District of Columbia.

##### NOTES TO DECISIONS

Course of employment 13.50  
Exclusiveness of remedy 23  
Questions of law 46

##### 13.50 Course of employment

Record supported determinations that employee's death, occurring when employer's truck, driven by employee, crashed some five hours after last customer call, arose out of and in course of employment, and that death was not occasioned solely by intoxication. *Phoenix As-*

*urance Co. of N.Y. v. T. Britton, Deputy Commissioner etc.* (1961, 289 F. 2d 784, 110 U.S. App. D.C. 118).

##### 23. Exclusiveness of remedy

Workmen's compensation law was exclusive remedy of employee against employer for injuries sustained while employee was being driven home by another employee's husband, in accordance with arrangement made by employer. *M. H. Shreve v. Hot Shoppes, Inc., et ano.* (1961, 292 F. 2d 761, 110 U.S. App. D.C. 268).

##### 46. Questions of law

Applicability of workmen's compensation law is question of law, for court, which erred in submitting question to jury. *M. H. Shreve v. Hot Shoppes, Inc., et ano.* (1961, 292 F. 2d 761, 110 U.S. App. D.C. 268).



## TITLE 38.—LIENS

### Chapter 1.—MECHANICS, MATERIALMEN, AND CONTRACTORS

#### § 38-104. Conditions.

##### NOTES TO DECISIONS

##### 1. Lienholder's rights

Payments made by owner to other subcontractors through general contractor, after plaintiff-subcontractor's filing of lien, were considered payments to general contractor, within statute requiring owner to withhold such

payment in favor of lienholder. *J. C. Spencer v. Old Stein Grill et al.* (1961, 194 F. Supp. 274).

#### § 38-106. Owner's duty.

##### NOTES TO DECISIONS

##### 4. Subcontractor's rights

Payments made by owner to other subcontractors through general contractor, after plaintiff-subcontractor's filing of lien, were considered payments to general contractor, within statute requiring owner to withhold such payment in favor of lienholder. *J. C. Spencer v. Old Stein Grill et al.* (1961, 194 F. Supp. 274).





## TITLE 40.—MOTOR VEHICLES

### Chapter 3.—OPERATORS' PERMITS

§ 40-302. Revocation or suspension of operators' permits—Procedure—New permit after revocation—Nonresidents—Penalty.

#### NOTES TO DECISIONS

##### 6. Operating vehicle after revocation

Although operating permit would have been restored to driver had he promptly applied for restoration at end of suspension period, driver who drove vehicle thereafter without obtaining official restoration was guilty of driving vehicle while operating privilege was suspended. *J. L. Brown v. District of Columbia* (D.C. Mun. App. 1961, 170 A. 2d 925).

### Chapter 4.—MOTOR VEHICLE SAFETY RESPONSIBILITY

§ 40-424. Operator deemed to be agent of owner.

#### NOTES TO DECISIONS

##### 21. Questions of fact

Whether automobile owner whose keys were removed while he was asleep at a home where he had gone with one who drove his automobile in collision had given permission to him to use automobile was question for trier. *H. M. Hancock et ano. v. C. L. Morris* (D.C. Mun. App. 1961, 173 A. 2d 922).

### Chapter 5.—PUBLIC-OWNED VEHICLES

§ 40-503. Section 40-502 made applicable to District of Columbia.

#### USE OF PUBLICLY OWNED VEHICLES

All motor-propelled passenger-carrying vehicles (including watercraft) owned by the District of Columbia shall be operated and utilized in conformity with section 16 of the act of August 2, 1946 (5 U.S.C. 77, 78), and shall be under the direction and control of the Commissioners, who may from time to time alter or change the assignment for use thereof, or direct the alteration of interchangeable use of any of the same by officers and employees of the District, except as otherwise provided in this act. "Official purposes" shall not apply to the Commissioners of the District of Columbia or in cases of officers and employees the character of whose duties makes such transportation necessary, but only as to such latter cases when the same is approved by the Commissioners. (Sept. 21, 1961, 75 Stat. 564, Pub. L. 87-265, § 10.)

#### REFERENCE IN TEXT

Section 77 of title 5, U.S.C., was repealed by act June 30, 1949, 64 Stat. 590, and is now covered by section 491, title 40, U.S.C.

### Chapter 6.—REGULATION OF TRAFFIC

§ 40-609. Fleeing from scene of accident—Driving under the influence of liquor or drugs.

#### NOTES TO DECISIONS

##### 4. Evidence

Evidence tending to identify defendant as driver of striking vehicle was insufficient to sustain conviction for colliding with another vehicle and leaving after colliding. *J. R. Peterson v. District of Columbia* (D.C. Mun. App. 1961, 171 A. 2d 95).

Conviction for a criminal offense requires more support than a mere possibility that accused was person who committed the crime. *Id.*

Evidence sustained conviction for driving an automobile while under influence of intoxicating liquor. *F. H. Kruse v. District of Columbia* (D.C. Mun. App. 1961, 171 A. 2d 752).

Where two or more inferences can reasonably be deduced from the facts, a reviewing court is without power to substitute its deductions for those of trial court. *Id.*

### Chapter 7.—LIENS ON MOTOR VEHICLES OR TRAILERS

§ 40-705. Liens to be kept by recorder in director's office.

#### NOTES TO DECISIONS

##### 1. Persons who may appeal

District Court should have found that one who filed petition to intervene in proceedings before Public Utilities Commission of District of Columbia with respect to bus and streetcar fares was transit rider and entitled to appeal to District Court from commission's order, where he made sworn statement in proceedings before commission that he was regular commuter on carrier's vehicles. *L. N. Bebechick & L. S. Goodman v. Public Utilities Commission etc.* (1961, 287 F. 2d 337, 109 U.S. App. D.C. 298).

Transit riders on buses and streetcars of carrier were entitled to appeal to District Court from order of Public Utilities Commission of District of Columbia raising cash fare for single trip from 20 cents to 25 cents, though order did not increase token fare of five for \$1 or 20 cents each. *Id.*

District Court should have found that person, who filed petition in proceedings in Public Utilities Commission of District of Columbia concerning bus and streetcar fares for reconsideration of order fixing fares, and who alleged therein that he was a transit rider, and who filed affidavit stating that he was occasional and casual customer and rider of buses and streetcars of carrier, was transit rider and entitled to appeal to District Court from commission's order. *Id.*



## TITLE 43.—PUBLIC UTILITIES

### Chapter 3.—SERVICE, VALUATION, ACCOUNTS

#### § 43-310. Commission to prescribe forms of books and records.

##### NOTES TO DECISIONS

Accounting procedures, regulation of 1  
Arbitrary or capricious 2

##### 1. Accounting procedures, regulations of

The statutes confer broad discretion upon the Public Utilities Commission in regulating the accounting procedures of the utilities company under its jurisdiction. *D.C. Transit System, Inc. v. Public Utilities Commission, etc.* (1961, 292 F. 2d 734, 110 U.S. App. D.C. 241).

##### 2. Arbitrary or capricious

Order of the Public Utilities Commission directing transit company to transfer a sum from the proceeds of the sale of property from its earned surplus account to three different accounts was not unreasonable, arbitrary, or capricious. *D.C. Transit System, Inc. v. Public Utilities Commission, etc.* (1961, 292 F. 2d 734, 110 U.S. App. D.C. 241).

#### § 43-314. Commission to provide for examination and audit of accounts—Allocation of items to accounts—Authority of agents, accountants, and examiners.

##### NOTES TO DECISIONS

Accounting procedures, regulation of 1  
Arbitrary or capricious 2

##### 1. Accounting procedures, regulation of

The statutes confer broad discretion upon the Public Utilities Commission in regulating the accounting procedures of the utilities company under its jurisdiction. *D.C. Transit System, Inc. v. Public Utilities Commission, etc.* (1961, 292 F. 2d 734, 110 U.S. App. D.C. 241).

##### 2. Arbitrary or capricious

Order of the Public Utilities Commission directing transit company to transfer a sum from the proceeds of the sale of property from its earned surplus account to three different accounts was not unreasonable, arbitrary,

or capricious. *D.C. Transit System, Inc. v. Public Utilities Commission, etc.* (1961, 292 F. 2d 734, 110 U.S. App. D.C. 241).

### Chapter 7.—ORDERS AND COURT PROCEEDINGS

#### § 43-706. Appeal limited to questions of law.

##### NOTES TO DECISIONS

##### 9. Review, limitations of

Function of the Court of Appeals in reviewing the Public Utilities Commission's orders and decisions is limited to questions of law including constitutional questions and the Commission's findings of fact are conclusive unless it appears that the findings are unreasonable, arbitrary, or capricious. *D.C. Transit System, Inc. v. Public Utilities Commission etc.* (1961, 292 F. 2d 734, 110 U.S. App. D.C. 241).

### Chapter 15.—WATER SUPPLY, ASSESSMENTS, AND RATES

#### § 43-1521c. Lien for water charges.

##### NOTES TO DECISIONS

Police power 1  
Retroactive lien 2

##### 1. Police power

Act of Congress governing District of Columbia water system and providing that District with continuing lien for water charges upon any land and improvements thereon to which water service has been furnished represent valid exercise of police power. *R. Friedman v. District of Columbia* (D.C. Mun. App. 1961, 172 A. 2d 562).

##### 2. Retroactive lien

Statute giving District of Columbia continuing lien for water charges upon any land and improvements thereon to which water or water service has been furnished did not operate to create retroactive lien for water furnished prior to its effective date or to compel owner to pay obligation of earlier owner for water charges before its effective date. *R. Friedman v. District of Columbia* (D.C. Mun. App. 1961, 172 A. 2d 562).





## TITLE 45.—REAL PROPERTY

### Chapter 14.—REAL ESTATE AND BUSINESS BROKERS' LICENSES

#### § 45-1401. Acting as broker or salesman without license unlawful.

##### NOTES TO DECISIONS

Admission against interest .50  
Evidence 1.50  
Sufficiency of information 4.50

##### .50. Admission against interest

In prosecution for acting as a real estate broker without a license, affidavit of individual defendant, who was president of corporate defendant, reciting nature of one of sales transactions, was admissible as an admission against interest. *Underwriters Construction Company, Inc., et al. v. District of Columbia* (D.C. Mun. App. 1961, 170 A. 2d 236).

##### 1.50. Evidence

In prosecution for acting as a real estate broker without a license, agreement between purchaser and another, to which individual defendant was a signatory, for construction of a house on a lot and a sales contract for one of lots signed by individual defendant as president of corporate defendant, were relevant to question of whether defendants had made a sale of lot. *Underwriters Construction Company, Inc., et al. v. District of Columbia* (D.C. Mun. App. 1961, 170 A. 2d 236).

##### 4.50. Sufficiency of information

Information charging defendants with acting as real estate brokers without a license was sufficient to inform them of charge against them and they were not prejudiced by denial of a motion for bill of particulars and to correct or dismiss the information. *Underwriters Construction Company, Inc., et al. v. District of Columbia* (D.C. Mun. App. 1961, 170 A. 2d 236).

#### § 45-1402. Definitions—Exceptions.

##### NOTES TO DECISIONS

Admission against interest 1.50  
Evidence 1.51  
Sufficiency of information 4.50

##### 1.50. Admission against interest

In prosecution for acting as a real estate broker without a license, affidavit of individual defendant, who was president of corporate defendant, reciting nature of one of sales transactions, was admissible as an admission against interest. *Underwriters Construction Company, Inc., et al. v. District of Columbia* (D.C. Mun. App. 1961, 170 A. 2d 236).

##### 1.51. Evidence

In prosecution for acting as a real estate broker without a license, agreement between purchaser and another, to which individual defendant was a signatory, for construction of a house on a lot and a sales contract for one of lots signed by individual defendant as president of corporate defendant, were relevant to question of whether defendants had made a sale of lot. *Underwriters Construction Company, Inc., et al. v. District of Columbia* (D.C. Mun. App. 1961, 170 A. 2d 236).

##### 4.50. Sufficiency of information

Information charging defendants with acting as real estate brokers without a license was sufficient to inform them of charge against them and they were not prejudiced by denial of a motion for bill of particulars and to correct or dismiss the information. *Underwriters Construction Company, Inc., et al. v. District of Columbia* (D.C. Mun. App. 1961, 170 A. 2d 236).

#### § 45-1408. Suspension or revocation of license—Causes enumerated.

##### NOTES TO DECISIONS

Misrepresentation 6  
Sufficiency of evidence 14

##### 6. Misrepresentation

Penalty of suspension or revocation of license, to be imposed upon a broker guilty of conduct in violation of statute, was a matter wholly within discretionary power of real estate commission. *P. R. Kelley v. Real Estate Commission of the District of Columbia* (D.C. Mun. App. 1961, 172 A. 2d 415).

##### 14. Sufficiency of evidence

Evidence sustained finding of real estate commission, which revoked broker's real estate license, that broker in violation of statute made a substantial misrepresentation, and engaged in conduct which constituted fraudulent and dishonest dealing. *P. R. Kelley v. Real Estate Commission of the District of Columbia* (D.C. Mun. App. 1961, 172 A. 2d 415).

#### § 45-1409. Hearing before suspension—Court review—Appeal.

##### NOTES TO DECISIONS

##### 3. Recovery of commissions

A broker procuring a purchaser for real property who entered into a binding contract with the vendor earned his commission and was entitled to receive it from the vendor when the transaction was abandoned by the parties when the vendor resold the property to others. *S. Blanken v. Bechtel Properties, Inc.* (1961, 194 F. Supp. 638).



## TITLE 46.—SOCIAL SECURITY

### Chapter 2.—OLD-AGE ASSISTANCE

#### § 46-201. Old-age assistance—Definitions.

##### NOTES TO DECISIONS

##### 1. Public policy

There is a sound public policy in favor of upholding contracts which will insure the support of parties attempting to provide for their own support in their old age, and at the same time effect the transfer of properties and businesses to their heirs or relatives prior to death. *G. Ottenberg, assignee etc. v. F. Ottenberg, Individually etc.* (1961, 194 F. Supp. 98).

#### § 46-211. Liability of relatives for support—Suit to recover.

##### NOTES TO DECISIONS

##### 1. Public policy

There is a sound public policy in favor of upholding contracts which will insure the support of parties at-

tempting to provide for their own support in their old age, and at the same time effect the transfer of properties and businesses to their heirs or relatives prior to death. *G. Ottenberg, assignee etc. v. F. Ottenberg, Individually etc.* (1961, 194 F. Supp. 98).

#### § 46-212. Estate of recipient liable for assistance—Transfer of property to Board as security.

##### NOTES TO DECISIONS

##### 1. Public policy

There is a sound public policy in favor of upholding contracts which will insure the support of parties attempting to provide for their own support in their old age, and at the same time effect the transfer of properties and businesses to their heirs or relatives prior to death. *G. Ottenberg, assignee etc. v. F. Ottenberg, Individually etc.* (1961, 194 F. Supp. 98).





## TITLE 47.—TAXATION AND FISCAL AFFAIRS

### Chapter 15.—INCOME AND FRANCHISE TAXES

#### § 47-1574. Definition of unincorporated business.

##### NOTES TO DECISIONS

###### 1.50 Engaging in business

Where physician devoted all his time to practice of his profession and relied upon his real estate advised for purchase or making of first trust notes or purchase of real estate, collections were made by bank, and physician did not follow up delinquent accounts, and had no employees or office connected with his investments, physician was not engaged in "business" of lending within District of Columbia Code imposing tax on privilege of engaging in any business within District. *District of Columbia v. J. C. Brady* (1960, 288 F. 2d 108, 109 U.S. App. D.C. 324).

In action by taxpayer against District of Columbia for recovery of franchise taxes paid on basis that he had been engaged in business of renting real estate, wherein evidence as to whether taxpayer, a practicing physician, had wholly parted with management and control of three of his properties that were rented was not conclusive, and trial court made no finding on such issue, case would be remanded for further consideration of that phase. *Id.*

Neither ownership per se nor even leasing of property by owner necessarily constitutes carrying on business of renting real estate within District of Columbia franchise tax imposed on businesses. *Id.*

#### § 47-1580. Purpose of subchapter.

##### NOTES TO DECISIONS

###### 12. Regulations of commissioners

District of Columbia franchise tax regulations which provided that prior regulations were rescinded except for certain purposes in relation to years to which they were applicable were only regulations in effect as to tax year subsequent to promulgation of such regulations. *District of Columbia v. Gallant Incorporated; Gallant Incorporated v. District of Columbia* (1961, 290 F. 2d 745, 110 U.S. App. D.C. 202).

#### § 47-1580a. Allocation and apportionment.

##### NOTES TO DECISIONS

###### Apportionment formula 2

###### Tax Court's authority 10

###### 2. Apportionment formula

Assessor has discretion to select, from District of Columbia franchise tax regulations, most appropriate formula for apportioning that part of corporate taxpayer's net income which is fairly attributable to business carried on in District and, in absence of such formula, can devise formula which, in his judgment, subject to court review, will properly determine net income subject to tax and amount of tax. *District of Columbia v. Gallant Incorporated; Gallant Incorporated v. District of Columbia* (1961, 290 F. 2d 745, 110 U.S. App. D.C. 202).

###### 10. Tax Court's authority

Tax Court was not precluded, by lack of regulatory formula, from determining income fairly attributable to District of Columbia for franchise tax purposes but could determine such amount by applying applicable tax regulations and using formula Tax Court deemed best suited to determine such income. *District of Columbia v. Gallant Incorporated; Gallant Incorporated v. District of Columbia* (1961, 290 F. 2d 745, 110 U.S. App. D.C. 202).

#### § 47-1586. Duties of Assessor.

##### NOTES TO DECISIONS

###### Apportionment formula 1

###### Tax Court's authority 2

###### 1. Apportionment formula

Assessor has discretion to select, from District of Columbia franchise tax regulations, most appropriate formula for apportioning that part of corporate taxpayer's net income which is fairly attributable to business carried on in District and, in absence of such formula, can devise formula which, in his judgment, subject to court review, will properly determine net income subject to tax and amount of tax. *District of Columbia v. Gallant Incorporated; Gallant Incorporated v. District of Columbia* (1961, 290 F. 2d 745, 110 U.S. App. D.C. 202).

###### 2. Tax Court's authority

Tax Court was not precluded, by lack of regulatory formula, from determining income fairly attributable to District of Columbia for franchise tax purposes but could determine such amount by applying applicable tax regulations and using formula Tax Court deemed best suited to determine such income. *District of Columbia v. Gallant Incorporated; Gallant Incorporated v. District of Columbia* (1961, 290 F. 2d 745, 110 U.S. App. D.C. 202).

#### § 47-1593a. Election of remedy.

##### NOTES TO DECISIONS

###### 1. Choice of remedy

Under District of Columbia Code to effect that administrative remedy for recovery of taxes shall not be deemed to take away from taxpayer any remedy which he might have had under any other provision of law, taxpayer is permitted recourse to either administrative remedy or common-law suit for recovery of District of Columbia taxes, and inasmuch as decision of Tax Court or filing of an appeal with that court precludes taxpayer from filing suit under his common-law remedy, exhaustion of administrative remedy can in no sense be a condition precedent to a common-law action. *District of Columbia v. J. C. Brady* (1960, 288 F. 2d 108, 109 U.S. App. D.C. 324).

### Chapter 16.—INHERITANCE AND ESTATE TAXES

#### § 47-1601. Imposition of tax.

##### NOTES TO DECISIONS

###### 10.50 Payment in lieu of support

A transfer in lieu of husband's obligation to support his first wife during their joint lives, or until her remarriage, was made for adequate and full consideration in money or money's worth, and if lump-sum payment made by executrix to first wife pursuant to property settlement agreement was in lieu of support obligation, it was not subject to a transfer tax. *District of Columbia v. F. C. Lewis etc.* (1961, 288 F. 2d 137, 109 U.S. App. D.C. 353).

### Chapter 19.—MOTOR FUEL TAX

#### § 47-1903. Importers—License—Application for—Contents—Fee—Bond—Issuance—Revocation.

##### NOTES TO DECISIONS

###### 1. Resident general agent

District of Columbia Motor Fuel Tax Law and police regulation required that foreign corporation acting thereunder designate local representative, but did not require

designation of resident general agent by corporation which maintained no such agent. *Cities Service Oil Co. v. R. E. McLaughlin, Commissioner, etc.* (1961, 292 F. 2d 759, 110 U.S. App. D.C. 266).

#### § 47-1916. Commissioners to make necessary regulations.

##### NOTES TO DECISIONS

##### 1. Resident general agent

District of Columbia Motor Fuel Tax Law and police regulation required that foreign corporation acting thereunder designate local representative, but did not require designation of resident general agent by corporation which maintained no such agent. *Cities Service Oil Co. v. R. E. McLaughlin, Commissioner, etc.* (1961, 292 F. 2d 759, 110 U.S. App. D.C. 266).

#### Chapter 20.—DOG TAX

#### § 47-2003. Impounding of dogs found at large.

##### AMENDMENT

1961—Section 2(1) of act Sept. 13, 1961, struck out the following: "without the tax tag issued by the collector aforesaid attached, and all female dogs in heat found running at large". This makes it permissible for the poundmaster to seize all dogs running at large.

##### EFFECTIVE DATE OF 1961 AMENDMENT

Section 4 of act Sept. 13, 1961, makes this amendment "effective thirty days after the date of its approval" [Sept. 13, 1961].

#### § 47-2004. Dogs wearing tags regarded as personal property—Damages for injuring or destruction of same.

##### AMENDMENT

1961—Section 2(2) of act Sept. 13, 1961, amended the section by striking out "That any dog wearing the tax tag hereinbefore provided for, except female dogs in heat, shall be permitted to run at large within the District of Columbia, and any" and inserting in lieu thereof "Any". This eliminates provision permitting licensed dogs to run at large.

##### EFFECTIVE DATE OF 1961 AMENDMENT

Section 4 of act Sept. 13, 1961, makes this amendment "effective thirty days after the date of its approval" [Sept 13, 1961].

#### Chapter 24.—DISTRICT OF COLUMBIA TAX COURT

#### § 47-2402. Board of Tax Appeals—District of Columbia Tax Court.

##### NOTES TO DECISIONS

##### .50. Choice of remedy

Under District of Columbia Code to effect that administrative remedy for recovery of taxes shall not be deemed to take away from taxpayer any remedy which he might have had under any other provision of law, taxpayer is permitted recourse to either administrative remedy or common-law suit for recovery of District of Columbia taxes, and inasmuch as decision of Tax Court or filing of an appeal with that court precludes taxpayer from filing suit under his common-law remedy, exhaustion of administrative remedy can in no sense be a condition precedent to a common-law action. *District of Columbia v. J. C. Brady* (1960, 288 F. 2d 108, 109 U.S. App. D.C. 324).

#### § 47-2403. Appeal from assessment—Hearing and decision.

##### NOTES TO DECISIONS

##### 13.50 Tax Court's authority

Tax Court was not precluded, by lack of regulatory formula, from determining income fairly attributable to District of Columbia for franchise tax purposes but could determine such amount by applying applicable tax regulations and using formula Tax Court deemed best suited to determine such income. *District of Columbia v. Gallant Incorporated; Gallant Incorporated v. District of Columbia* (1961, 290 F. 2d 745, 110 U.S. App. D.C. 202).

#### § 47-2406. Appeal from imposition of tax involuntarily paid—Suit.

##### NOTES TO DECISIONS

##### 3. Voluntary payment

In District of Columbia, a tax payment voluntarily made cannot be recovered. *District of Columbia v. J. C. Brady* (1960, 288 F. 2d 108, 109 U.S. App. D.C. 324).

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